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1815

v. 7



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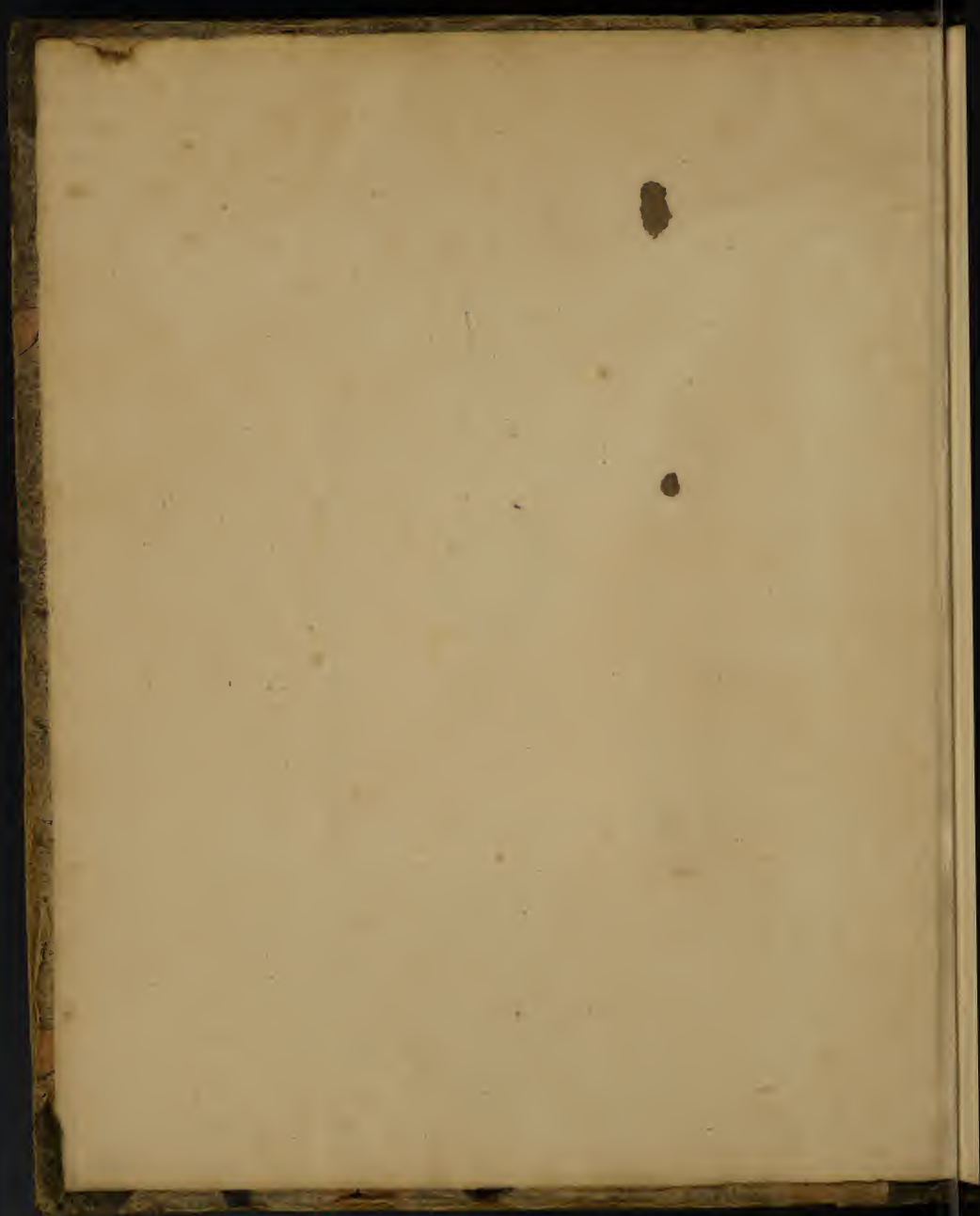
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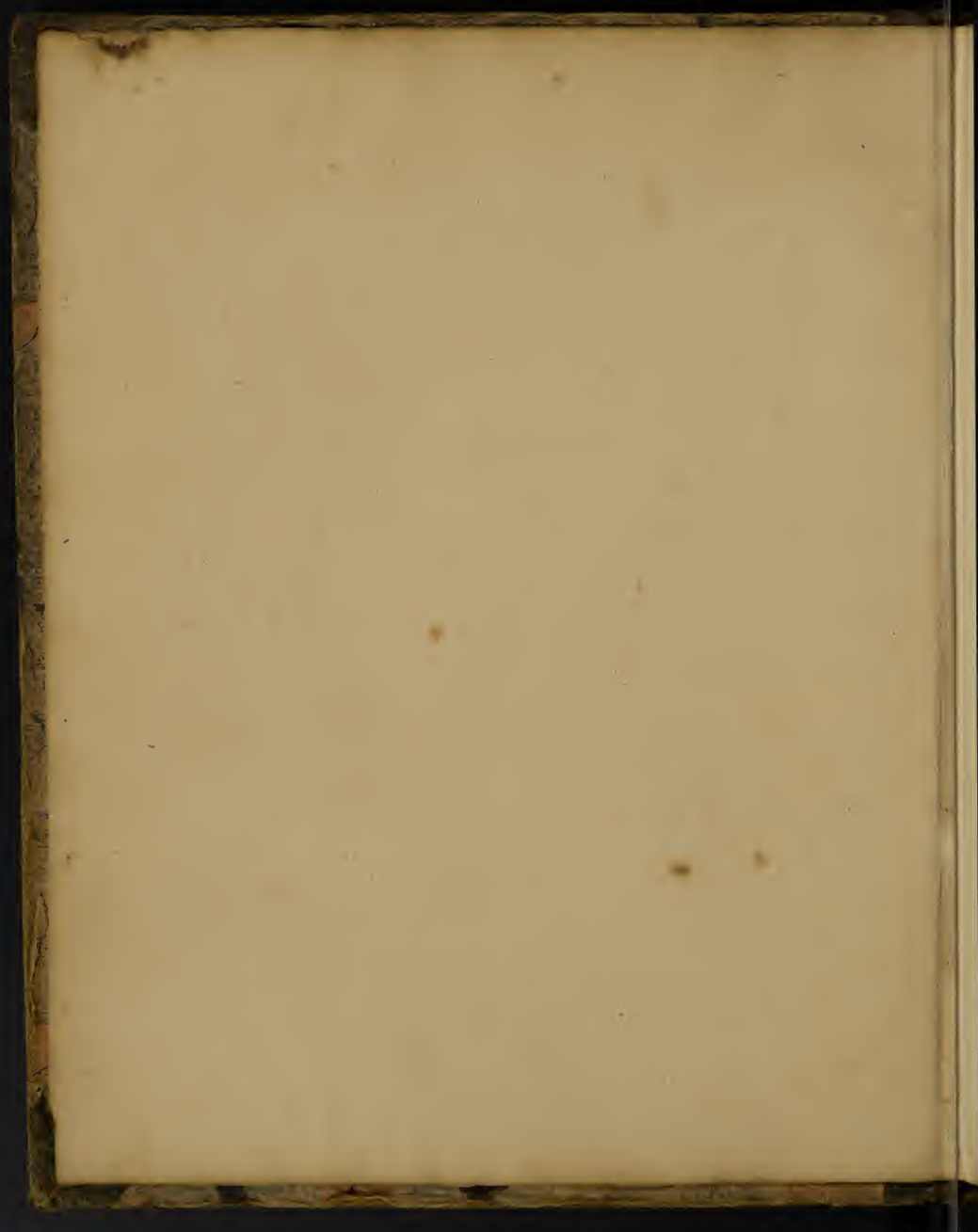
v. 7

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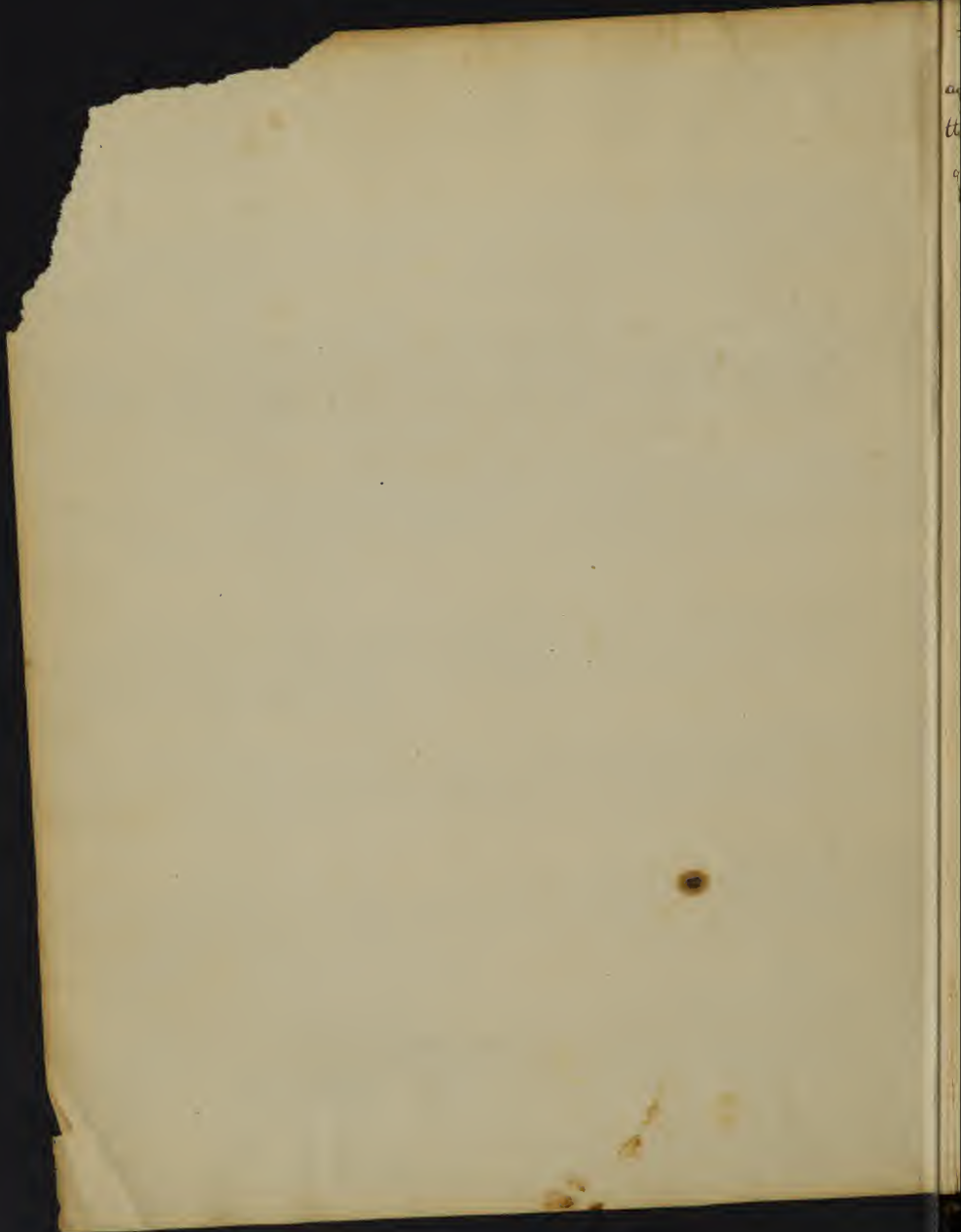
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Malicious Prosecution.

This action is to recover damages against one who has procured an indictment or other process against the P^r from a corrupt motive - i.e. malice without any ground or probable cause. 3 N.B. 116 E. 525 1 B. & B. 106
10th Edition 106

Analogous to the old action of Conspiracy which is now much out of use - Conspiracy lies only against two or more for having secretly & maliciously procured the P^r for treason or felony thus endangering his life. 1 Saund. 230 Finch 305. 3 B. 126 2 Bulst. 271. E. 530 1 Com 155 2 B. 379

So an action on the case is analogous in the nature of a conspiracy - which lies where two or more conspire to procure another maliciously & without cause or otherwise conspire to injure him in person fame or reputation or property Finch 305. 3 B. 126. E. 530. 1 B. & B. 106 1 Saund. 230

The grounds in an action for malicious procⁿ resembles in some measure that of Slander. It is not necessarily or generally the danger to which P^r has been exposed but the vexatious expense & scandal. 3 B. 127. 10 Mod 219 11 B. 101 3 B. 13.

Action of Conspiracy lies not unless P^r has been actually prosecuted / E. 527 / & acquitted / 12 Co 23. Co 38. 1 Roll. 112 / for so are the words of the writ / 3 N.B. 114 260 3rd Ed. 211 E. 530 1 Com 161.

3 persons were engaged in a conspiracy, 1 was acquitted & the other
that the 3rd was tried & convicted / 2 John B. 301 / 911 who then
it was not an act in the case in the nature of a conspiracy
Do J. B. 126 in 1811 210

In a criminal case for a conspiracy of several what any of
them have said at another time may be given in
evidence against them. Doth. 5 C. 1. 127. 2 M. 8 Broke

Malicious Prosecution.

980

Indictment for conspiracy lies where there has been an unlawful conspiracy, although the nothing is executed / 2 Lev. 51. 9 Co. 55 240 530 / So action on the case in nature of a conspiracy lies the indictment lies. has been actually exhibited / 1 Burr 51. 1 Roll 112 1 Com 158 225 / i.e. books for changing a crime by conspiracy - injury to reputation.

Difference between an action on the case in the nature of a conspiracy & a conspiracy - In the latter if all but one are acquitted judgment cannot go against him - in the former it may go against one only / 240 530. 1 Com 159. 1 Roll 379 Bull 14 Phil. 210 2 Lev. 52 1 Roll 11. 1 Ray 176 5 Mod 408 B. 119. Cro E 239. / The latter is a formal writ in the register / Phil. 211 B. 1. B. 250 / the former a special action on the case. In the latter guilt is the danger to which the conspiracy exposed the P. - In the former it is the consequential damage - Hancock & Co. 416 3 B. 126 Bull 14 10 Mod. 219 1 Wils 591 1 B. 120. 230 / So in case of Malicious Prosecution.

Case in the nature of a Conspiracy is substantially an action for malicious Prosecution with this difference that the latter may be brought against one or no other being concerned. The former must be brought against two or more except one changing that he with another or others had conspired to / 1 Com 159 / The grounds of the two actions are therefore the same / 240 531 2 Lev. 52 Cro E 173 or 239 Phil. 210 1 B. 120 230. Ray. 176 5 Mod. 408 Bull. 14 / the two are sued judgment may be against one only. Bid.

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26th Nov. 203

The rule requiring Off to show the maliciousness - decided in his
favor is satisfied by showing a judgment in his favor in County
Court after the Justice from which the case was appealed
It was against him 4 Mend 581

If one be accused to a Justice for an offence it is asserted that the accusation
being made the Justice is as a witness. But if the party be never
accused of the Justice out of Malice cause him to be convicted
it is otherwise. The Justice is liable in an action of trespass for
false imprisonment 2 BR 231 1 Cro & 130 1 Leon. 187 2 BR 227
arg. 1 Cow 2. 470

982

21 P

Criminal Prosⁿ False &c.

it to be false or without probable cause are. 15 Cunn 187. Cro & 130
2 BR 231. 103 & 101.

But if a public off. without information & of his own mere motion maliciously &c. prosecute another / Cro & 101. / he is liable / 103 & 101
2 BR 101. 25 Cro & 130 / Com 138 / Here the off. acts ministerially

But if the off. is the magistrate granting the warrant & the
prosecution is that of his own motion under it his act not care is
the proper remedy & in this respect the case in Cro & 130 is denied.
2 BR 231. Cro & 130. Price Pans. 650 "False decision"

It must always appear from the declarⁿ. that the proof for
which he. are at an end. - In conspiracy legitimo modo acqui-
tutus nec parry / 9 Co 56 Doug. 205. 10 Mod 209. 2 BR 231
Kd. 267. Hca. 114 / that he. was discharged from prison not
suff.

But the omission to show that the prosⁿ is at an end is cured
by verdict. 1 Pount. 228 Eps 532.

An allegation that he. was "acquitted" on the original prosⁿ is not
supported by evidence of a non pros. for this is not an acquittal
Hall 14. Eps 536 Gal. 21 6 Mod 261

The declarⁿ. states all the proceedings in the original prosⁿ & any ministerial
in a material part of the indictment &c. is fatal / Eps 532. 21 BR 570
Es. 6 contains between the original declarⁿ. record & declarⁿ as to
the duty of acquittal 6 Mod 216 / Deny in an indictment
fact Eps 532. 2 BR 1050.

It seems that no civil action lies agt. Judges of record granted

Vol 12 - 1st Series

Vol 12 - 225 for much law on this subject

Criminal Proⁿ false &c.

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for even malicious acts done in the exercise of their judicial powers,
1 Cr. 158. 2 Cr. 635 13 Cr. 603. 13 Cr. 34. 8 Cr. 161. 72 Cr. 114. 191.
2 R. 328 2 Bl. R. 1141. 12 Cr. 23 2 Mod. 219 Rice Cr. 130

Malice may be generally inferred from the want of probable
cause 4 Burr 1974 But want of probable cause cannot be inferred
from the mere express malice 18 Cr. 544 2 Cr. 529

To prove malice ^{of} may give in evidence collateral circumstances
of an advertisement by Doct. that the indictment was found 2 Cr. 535 the
conviction of ^{of} in the former ^{pro} by a competent jurisdiction is
conclusive evidence of probable cause 2 Cr. 529 1 Wils. 232. Hob. 267.
Mol. 262.

Arrest is in most cases presumptive but more than
presumptive evidence of the want of probable cause - but being
presumptive it throws the onus on Doct. to prove probable cause
in most cases 2 Cr. 520 1 Wils. 232. Carter 154 11 Cr. 243 4 Mand. 598

To arrest even on a defect in the original ^{pro} is presumptive
evidence of want of probable cause in most cases 4 Cr. 247.
2 Bl. 154 - Whether "innocent" found is prima facie evidence of
want of probable cause?

Arrest is not always prima facie evidence of want of probable
cause. 2 Cr. 4 If the ^{pro} is bound over by a court of enquiry or the
bill of indictment has been found by a Grand Jury, or generally
lies on ^{of} the arrested on the trial - presumption being against
of Doct. 2 Cr. 535. Bull. 14. 2 Bl. 15 Do it appear from the Judge's report
that there was probable cause Bull. 14 2 Cr. 529.

of one is another by using name the, he was the person
instance he may maintain false imprisonment
unless he were as well known by the one name
as the other - such person is no justification of Moul
320 340 350 440 555 & last 328 6 Coues 456

Dept must prove that when he caused the change to be made
that he had been informed of or knew of the existence of
facts which were suff to induce him or a reasonable
person to believe the truth of the change capt Off 32 6 L

Criminal Proⁿ false &c.

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But where the facts lie in the knowledge of D^t himself he must shew probable cause tho the Grand Jury have found the indictment &c. Bull. 14 E. 536 /
E. Proⁿ for robbing D^t in 8 proof of the evidence given before the Grand Jury is good evidence of probable cause Bull. 14 E. 115 515. 36
b. 110. 216 / & D^t calls at the original trial as to the existence of the crime charged is admitted if no other person was present at the time.

The existence of probable cause is a mixed question partly of fact & partly of Law. What amounts to probable cause is a question of Law merely - i.e. whether the circumstances alleged to prove probable cause are true is a question of fact - but the fact being found the inference is a conclusion of Law 1 BR. 345
519 Bull. 14 E. 529.

Therefore regularly the D^t plea should shew the ground of suspicion on which he acted / Cro E. 134 E. 533 / So it seems necessary for D^t to shew that the crime for which he prosecuted was committed - Sem. / Sem. / there can be no probable cause - E. D^t believes his property to be stolen when it is not 2 E. 524 b. 110. 216. 2 Hens. 120.

So what amounts to malice / or the existence of malice the facts being given / is a question of Law. 2 BR. 1493
1 BR. 519 Car. cited orig. 1 Wils. 233.

When the action is for malicious proⁿ for felony, a copy of

Action on the case lies ~~not~~ ^{not} an off^r for maliciously executing
process in an oppressive manner. 53 Am. R. 125, D. 11

* In 2 vols. of declaration between good looks did not make that diff,
know we live in an age with difficulty, the best way is always to ease it

Box - 14
Dec 228

Civil suits. &c.

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the record granted by the Court in which the trial was had is necessary & the granting is necessarily discretionary. Rep. 534 Bk. 385. 132a b1 / Where the issue brought is a misdescription only such copy is not necessary. Rep. 534 Bk. 385. / Original produced by the Clerk is suff.

Civil suits. &c. Genl. rule is laid down that the action does not lie for bringing a civil suit when there is no right of action - for it is a claim of right & the Pff is answerable pro falso clamore. & is liable for cost so no damage prescribed. Bull. M. Sed. 10 Rep. 525 132a 205. 106d. 1106

Where there is a good cause of action in favor of one & another having no authority sued & arrests the debtor the action lies. Rep. 52b Bull. 12 Sed. 14.

When Pff. in the origiⁿl. suit having good cause of action sued in a Court not having cognizance the action lies. 146o 14 But it is necessary that the origiⁿl. Pff should have known that the Court had not cognizance. Rep. 52b Bull. 12 2 Hills 202. 2 Sw 53 Bk. 378 2 Hills 307

When the suit is utterly groundless & known to be so by the origiⁿl. Pff. tho' lost in a proper Court & no arrest of the person but merely property taken action lies. Rep. 527 the first suit being malicious. Ex. Doff. had sued out a second fi. fa. & sold Pff's goods after having taken other goods under a former fi. fa. - action lies for vexatious damage - Hob. 205 Bull. 12. Hob. 206 good bye -

6. If he collect an equivalent quantity of property & \$50. for a
cost of \$5.

In an action for conversion of a chattel Off having been
paid the taxed cost of his reply on the chattel
is not entitled to recover as damages the extra costs
occasioned him by the reply suit 29 C. L. 409 -
14 Bing 110. 1 E. D. 358.

J. R. is of opinion that if a creditor will make use of legal process
in collecting his debt without deriving any benefit himself
this action will lie against him

If a person having no right of action on color of right & knowing it to be so sues another for the purpose of vexation he is now liable. 2 Wils 305. No such cases in the old books 1 Bos 388 B. 129 3 East 314. Carter unless held to specific bail Ep 576 but 12 B 257.

So if for such purpose he sues him for a much greater sum than is due. 1 S. & M. 523 1 Sid 424 Ep 525. But it is said that the action will not lie in the last case unless the Off. has been holden to specific bail Ep 526 Bull. 12. x 2 Sid 53 vice Sed 14

The particular grievance must be stated when founded on a former civil process & that it was done maliciously & with intent to injure & oppress the Off. 12 Wils 305 1 Sed 14 Ep 532 1 Sid. 424 1 B. 380. / So "on purpose to hold Off to bail" if that is the injury 1 Sed 15. Bull. 12. / No damage being presumed. Carter.

See whether summarily arresting a debtor from home without any particular benefit to creditor but from apparent malice is a foundation for this suit - Decided not to be by our S. L. 3 B. 2. 152 x

In the above excepted cases it is necessary that special damage be shown & proved 1 Sed 14. 15. 1 B. 374 / See if a stranger invites A. to bring a groundless suit agt. B. No special

+ the want of this circum¹ is cured by verdict 150
15 1 Saund 228 B. n. / But is fatal on demurrer or
on default 1 Saund 228 B. n. = 1 Sutr 407 1 Saund 280.

10 Mo. 209
H. 267
2 N. in 35.
2 S. R. 225

If the suit was decided in one court in go¹ present Off^r con
appeal in his favor the rule that he must show a
determination of the first suit in his favor is annulled
6 N. w. 420 4 do 590 - To the entire court be
sustained where the former decree was terminated by
a stay procured by consent of the parties 22 C. 368

Mo. 267

Civil Suits &c.

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damages is necessary as against him / as in criminal
cases / not a claim of right by him - he not amenable
Sect 14 & R 380 / nor liable to costs.

Two requisites in all cases to support this action for a
civil suit. 1st. former action determined - i.e. ended &
decided it cannot appear to have been groundless or
unjust / Doug 205 / Sect. 15. / 2d. Actual damages
already sustained or inevitable - / Lp 527. 531. Stat
114 Bull. 13. / Therefore if one forge a bond in my name
I can have no action till sued upon it.

But it is not necessary that the execution suit
should have been decided in favor of the present
Pl. If. No suit suffered in the original action
yet this lies / Lp 527. Bull. 13. / Any groundless proceed-
ing by action when ended is on this point sufficient
Lp 527.

Our H 429. gives an action against all who
wittingly wrong others by prosecuting any suit &
with intent to vex & trouble & trouble damages
It also subjects to fine of \$7. & for the third offence
to be proceeded against - as a common barrator

I can not join in an action for a execution suit the

When the injury is occasioned by carelessness & negligence
of deft. case may be sustained tho the act causing it
the injury be immediate so long as it was not a
wilful act. Ex. Deft. carelessly drove his wagon against
Plt cart & broke it - 25 Cal. 57, 362. 3 Camp 188 - Inten 14 p 655

Case for a noisy nuisance - plea that deft. had person. his shop
for 10 years before Plt, for his house the enjoyment of which was disturbed
by the noise & that during all that time the noise in question was
made & was necessary for carrying on deft. trade - plea held it is not
arising a person of 20 years & that Plt coming / Geo E 751 / to the nuisance
was no defense 29 Cal 384

injuries being separated & personal / King 145 / But there
may be two Doff. Sent. Bull 5. 18th 79. 910 E. 517.

Whether damages may be recovered in this action - qu-
tior esse, contrary - How can they be recovered? E. 537
18th 79. 910 / The malice of Doff. enters into the
consideration of damages, / E. 537. Dam 1911 / Not
separable by composition -

~ dit dimis ~

Trespass on the case

Action of Trespass on the case arising
ex delicto for injuries to personal property & persons lies for wrongs
not accompanied with force - Acts which tho not forcible are
injuries & culpable - neglect & omission / Bull 74 / 2 for consequential
injuries occasioned by acts which are forcible - Ex. 1st kind of
wrong. Doctor Mord. p. 1000. Slander Mordaunt p. 1000. Neglect is ex
delicto or tort - 3d. injuries remedied by 6 actions usually
called "Trespass per quod" / 3 B. 122. 133 E. 398 645 11 Mod 180
2 B. 1399 1402 B. 1295 2 B. 167 / Throwing a log into the
road over which one falls 18th 79. 910

Action of Tre. on C. also usually joined on the Op. of St. Westm. 2. 3 B. 122
29 243 3 B. 51 / Case was known at C. L. Lamb. 3 B. 123 2 B. 129
2 B. 1145 2. Dec. 20.

can action on the case for the fraud of the debt in purchasing
person's property of the Off' dealer & evidence herein to demand so
that Off. should be prevented attacking the prop^y or lode for
the security of his debt cannot be sustained. Off.' remedy
is to attack the prop^y fraudulently sold or forfeited
the debt 11 Pick 527. But if Off. had attacked the prop^y
& the debt by collusion with the dealer prevents the case
case will lie 7 Pick 542 11 Mass 136 - Cuth 8 -

The proprietor of each bank of a stream owns half the land
owned by the stream but there is no property in the water
each has an equal right to the use of the water &
cannot without the consent of the other so use it
as to work an injury by diversion or throwing it back
he must show either a grant or license from the one
affected or an interrupted enjoyment for 20 years
1 Sim & Ste. 190 23 C 278

Case Whinnell.

876
989

In the forms of declaring & common parlance make a distinction between actions on the case & actions of trespass on the case. Ex. Crompton are well an action on the case - Damen trespass on the case - first class, arises ex contractu - P. ex delicto - Eng. law knows no such distinction - Crompton is trespass on the case Reese 245. 394. 3 Bl 208 -

If case is lost, where trespass is the proper action prof. accider - 1 Bl 125. 2 Moa 131 Cro. C. 116. 96 Ream & Ben 191 111 2 506 / & a converse -

Rule If the act be immediately injurious trespass is the remedy. Ex. Buttong &c - But if the injury is consequential trespass on the case seems to be the proper action Ex. Top of service &c - 3 Bl 208 6 Bl 125. 53 2 648 2 Bl 1035 1 Com 204 3 Ream 244 2 Wils 313 Bull 26. 39 1 Bl 1399 111 634 Burr 1114 2 Bl 231 3 Wils 1407 11. 14 892. 2201

The action for loss of service by the hostility of ones servants is called trespass & trespass has been holden to be the proper action 2 Bl 1176

Difficulty in applying this rule - the effect need not be instantaneous & instantaneous trespass but when it is trespass is the only remedy -

Injuries which are not the instantaneous effect of the original force are in some ~~cases~~ cases remedied by trespass in others by case - where the immediate cause of the injury is but a continuance of the original force it not being in any manner procured by the voluntary intention of any retained agent the author of the original force is liable in

Where the injury complained of is the result of the common
fault of both parties no action lies. 34 C.L. 436, 19 March 1886
11 C.L. 398 34 no 391

An action on the case for obstructing the ex. of some
person cannot be sustained unless the person & area that he
had good cause of action against kept in the money
process. 2 March 559 2 March 161 4 C.L. 611 2 C.L. 128.9
Suppose he had a cause of action but the person obstructed
was not obliged to refuse it?

Leave lies for a false representation as the sale of real
or personal estate & whether it relates to the title or some
collateral thing attach^d to it. 7 March 280 13 Johns 345
9 Bann & Brown. 928 & such fraudulent representation or
concealment vitiate the contract. 2 Camp 153 4 March 779
But if the party making the representation did not
know it to be false he is not liable in an action
& Ansett 27 C.L. 194

Case when it lies

976

It depends - for in this case it is the author of the whole force - But when the original force ceases before the injury commences the author of the original force is then at all liable / liable in law only - the ultimate force is not his act & the injury is not considered in law as the immediate effect of the original force - Ex. One shoots a ball which after glancing 100 times, kills a horse - the bodily hurt is in law the immediate effect of the original force - for the proximate cause or ultimate force is but a continuation of the original force or causa causans - See therefore here No. 1000 - An injury is not the immediate effect of the original force - neither is it the purely physical effect immediate or remote of the original force - The immediate cause of the injury to a horse is the causa causans - the physical hurt done to the horse - An injury remedy therefore is in case of the action by the Master in such cases always have been as in principle they ought to be case 12 B.R. 167 Ex. 645 Sal 206 of the King's Bench called No. 1000 / 2 B.R. 274 831 3 B.R. 18 2 B.R. 167 2 B.R. 146 3 East 599 / But in 2 B.R. 146 it is said that the master's remedy is trespass - doct. 3 B.R. 142 7 Co. 113 102 330 .

A thrown a stone which bounded once in bounding lands B - here the vis visperu continues without intermediate accidental agents & B has trespass - 5 B.R. 648 Alia 636

But in the case put by Bl. J. Case would be the proper remedy - a ball shot at a man glances & wounds - trespass lies - 10 B.R. 167 / So there can be the injury is the injury is the immediate physical effect of the original force & not divided by the intervening free agents - hence if a log be

Some make a plea in his own land & damage caused to
another he is liable unless occasioned by an agent
he could not foresee - Ex. & S. 11. 1st of 1811
1st 18. So if his stock strayed near his neighbors then
fired by spontaneous combustion & injured the neighbor
he is liable unless he has used ordinary precautions
32 C. L. 211

An action on the case will lie for the aspersion of a falsehood
with a fraudulent intent as to an existing fact where a
direct positive injury results in consequence 2 Wms 385
3 Wms 57 6 Wms 346 2 Day 215. As if one recommends another
to be in good credit knowing it to be false whereby another is
injured 7 Wms 18. 3 Wms 57 2 East 92. That such repre-
sentation must be made with an intent to deceive Parker
& 226 vid 1 East 327 3 Esp 207. That if one undertakes
to represent he state all he knows 15 Wms 131 8 Wms 35

An action will not lie against a master of a vessel for running his
vessel against a shipwrecked vessel the master being on shore & a pilot
employed 1 Wms 305 per 1st 18. 1st 18. 1st 18. 1st 18. 1st 18.
per 1st 18. 1st 18. 1st 18. 1st 18. 1st 18. 1st 18. 1st 18. 1st 18. 1st 18.

Case when it lies

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thrown into the road & falls over it Case lies - not the
effect of the original force continued - Cro S 1146 1 Com 204
E. 599. Cro E 10 H. 636 -

Went 295 case for rising a wind horse which came over Df / 1 Com 20
There I conclude Df was not negligent as agent so far as
related to the force / 1 S 807. See 2 H Bl 2 Bl. R 889 / 2 S 79 of.
driving negligently his cart over with force agt Df horse Case
adjudged to lie - Not alleged as Df out / vice & East 597 / De la Fontaine
did not describe the force as the personal act of Df - 8 Bl 188.

If a log or trunk on my own land & about a water course flows
my neighbors the injury is the physical effect of the force. Not
Case not trespass lies - but the proximate cause is negligent
to cut down of the stream - therefore not a continuance of the
force. 2 H 104 Rep 638 H. 638

If a man in performance of his masters business commit a
trespass & cause injury with force / 1 S 100 of negligently so
trespass on case the proper action - against the master? 1 Bos
474 6 Bl 125 2 H Bl 42 H. 441 5 Bl 649 / Case held. H. 1833
1 R 129 Bure 2093 2 S. R 446 Note Ship was over Df's boat
with force & by negligence of Df's pilot - Case the proper action -
not the personal act of Df. 1 H Bl 129. 130. 139

If he negligently runs his vessel against B's. trespass lies, if by negligence
Case - injury immediate in both cases - but it is the act in

Feb 1st 1814 R 305 D 14

The owner of a domestic animal is not liable for injuries it may have committed unless he had notice that it was accustomed to do mischief

13 Johns 339 2 R 109. 1583 2 Salk 662 vice 16 R 169

An action on the case lies ag^t the party who wrongfully procures out an ex^h or a just^h while he knows to be paid whereas the profit of debt is sold & it is not necessary to allege a false statement made - & the party to the record is liable tho he be the assignee of the just^h - 7 Mass 301 2 Bos 129 3 Ex 34 1 Camp 295 4 Mass 424 11 Mass 220 500 4 Johns 450 & the ex^h holder receives the surplus of the sale does not purchase him from satisfying its liability 7 Mass 308

Cases when it lies

both over the force & not in the last 38 R 188 3 East 393 2 Camp 1144
If the deed does it willfully without the grantors consent - Murder
is not liable 1 East 106 1 Com 204.

In the case of trespass for the force is continued - it is an injury
out of force - but obtaining a grant which carries with it to another
benefit is otherwise for obtaining the grant does not secure the value
- not compulsion - here the force was before the injury & has place -
cutting down a hedge of hawthorn trespass lies - it is like procuring
water on the off hand -

Where does lie for an injury arising in consequence of an act
with care the principal act may be found to have been done
vi et cum - tho the action be cum - it is more descriptive deph.
3 Rees 244 / to better the original act may be beneficial or not is
not the question 2 B & R 492.

This third case not trespass lies where the act is originally lawful
& the result is before the 6th 2 B & R 499 / not cum de trespass
true & safe - Meaning is that trespass lies not where the
original act is not against the peace 3 B & R 454 3 Com 382 2 Roll 336

This action lies for a great variety of misfeasance & nonfeasance -
Many of these have distinct titles - hence Appropria 1 B & R 382
122 1 Com 132 224

A more regular for which this action lies, on the ground of
negligence must be a neglect of duty imposed by law
5 B & R 11 1 P & W 232 Cro E 219

Here a Sheriff is liable for a neglect in his Office & so

Since in 11 March 81 that a person who interferes to do an act
without consent is not amenable for committing to do it even
the special damages are recovered - See you as to the good
application of this doctrine in § 310

In an action for a fraudulent representation or suppression
of fact respecting the solvency of another the belief of 2d
in the solvency of such person is no bar unless the law
find there was apparent good grounds for such belief
16 W. 648

The seller is bound to know the state of affairs in 12 Johns 468
§ 3165

Case when it lies

192

are all officers & private persons / 1 Com 206 1 Roll fin many
cases: In a Sheriff would be liable for not selling the
property he has taken by process - in Eng he may return
that they remain in his hands defective in form - 2 Ba
366 but 323 1 Bos 350 -

A person performing services for another in the line of his
business & doing so completely or partially, is liable on this
action / 1295 / But if the business is not of a public nature
he is not liable for want of skill unless in case of a special
engagement - the former is true - 1296 1 R. 114 2 Wils 389
Exp 608 / But in case of an undertaking in surgery or physic
it seems that unless the person undertaking make the
practice of physic his common profession they are not liable
unless he neglects unless they make a special undertaking 3 Bl 66
Exp 601 1 Com 165 / folly of the statute - 1709

x It lies in quasi against him by whom not a culpable omission
the fault of another is imputed - Ex. 100 - the action of the
wife which has injured her. Exp 601 1 Roll 90 258 122 1 Com 166
Hutt 132 3 Ba 182 / qu. If he did not know it till later?
1 Com 166 1 Roll 90 2 A. F. 3 Bl 166 / in this case that
provisions for debt were given.

For mischief done by a dog acting - if a servant to such
mischief owner is liable having notice - Not without
such notice alleged / 1 Com 350 1 Com 208 but 332
3 Dal 12 Intro. 40 Exp 605 -

When ^{an injury} to a person is effected by regular process
of a court of competent jurisdiction through malice
wrongly adopted case & not trespass in the remedy 16
Pl. 136 3 Ct R. 700. 4 do King v. Chamberlain. If the
process be irregular trespass in the remedy 16 Pl. 136.
5 Wrench 243. cites 7 Co. 249 3 Laines 267 13 John 444 10 do
138 2 do 468 14 do 375. 16 Laines 92 recognizing the above
rule but deciding that if a party procures an ex to be
returned upon a collusory judg he is liable in Trespass
the principle that the court has no jurisdiction in
such case - & that the officer issuing it without the express
direction of the party is also a Trespass. 12 3 Ct R. 537-

Case when it lies

794

Under our § 238 notice is not necessary

For injuries done by animals for a matter as Baroff without notice § 4. 60b 1 Com 208 Cro & 254 / 204 107. / Has the injury / be diff. as to the object from which the owner has notice / the 12.64. Sol. 612. / Science not traversable / 1 Com 208 460 18. / Roll 2 / "Science" not being a direct allegation / On the ground of negligence 1 Com 208

If a timber float on B's land 15 hrs. Case sent. / 24.81 258
E. 639 / It lies for hindering one from the free enjoyment of his right of some kind - generally an incorporeal right 381 286. 841
1 Com 199 96 112 3 Dec. 266 Cro & 245 1 Vent 275 24.81 86 2 Roll.
104.7 / 24 Obstructing a right of way § 5. 638.

For an E. of a piece of land in final this action lies agt the Sheriff §. 215a 245 / Act & 20 the only action agt the Sheriff in action case was Sheriff on the Case 2 Ba 245 1 Shaw 176

Now by H. Weston 2-11 Rich's 2^d doct lies in both cases / E. 609 Cro & 9 114 873 / When Doct is bad the King cannot give up the whole ~~seaman's~~ jury / Action in Case E. 609 2 Ba 126. 2 83.

Where the process under which one is arrested is void no action for escape lies agt the Sheriff - Seems of common law E. 608 209 657. Sol. 273 Cro & 188 576 Currie 148

For an franchise of a Sheriff: Sheriff himself is liable

No action lies agt any one for doing his duty, the question be-
ing, whether malice be shown, 11 Selw 254 120 Ex.
Returning a person exempt from military duty to the local market
refusing to receive the vote of an elector - If malice is shown
case is the judge's making 2 Cr R 700

In an action for maliciously holding to bail &c. not suffi-
cient to prove that the writ was sworn out after perjury of the
deft if the circumstances furnish no inference of malice but in
such cases evidence of actual malice must be given 2 Bos &
129 Gilson v. Chastell 2 Exo 34 Jackson v. Burleigh Selw 938
1 Bos 388 Scheibel v. Fairbairn -

Of. wrongfully seized goods & placed a man in
possession of them for some days, held that the owner
might recover damages. They had the use of them
all the time 20 Cr 82

Case when it lies

990

only / Sheriff in D. of for misfeasance & tort both in tort &
in voluntary escape &c. Esp - 603 Cro E 75 3d 18 Q. B. 210 Camp
403 a Camp 403 2 Mod 832 1bb 211.200

If a Sheriff having arrested one on maine process refuses to take suff.
bail he is liable in trover but not in trespass - Not a trespasser at
initio - the abuse of the authority of trover being negative
Cro E 141.196 2 R. 25a 11b. 1 Barron 20b 2 Wils 315 2 Mod 31. 8 Co 14b
1 Lane 189 1 Com 489 3a. 582 2 R. 211 5b.

This action lies also and recovery of one taken on maine process in
favor of the original Df. Bull b2 Bull c 211 1er 311 8 R. 127 1 Com
204 Cro E 419 5b 1p 110. 57 Cro E 77 2 Mod 180 / respect trover maine
being more give the whole trover & trover. Esp. trover to trover. the
original Df. insolvent on out of trover Bull b2 Esp 657.

So it lies for trover of one taken on trover process in favor of the
original Df. / E. 610 Cro E. 77. 109 2 Wils. 98 5 Com 438 / trover in
and trover discharges the Sheriff trover to Esp 610 So in
this case in favor of the Sheriff 2 Wils 98 4 Barr 399

It lies for Sheriff against a person escaping on maine process / Esp 613 /
that the Sheriff has not been trover / Esp 613 Cro E 53 / trover in
the trover Sheriff in favor of the Sheriff 2 Wils. 98 5 Com 438 / trover in
favor of the Sheriff trover the escape & trover Cro E 53 359

But the trover officer cannot maintain the action against
the party escaping even tho the Sheriff has recovered agt him
for he is not liable to the Sheriff by law but by contract / Esp 613
Cro E 341 / the injury is to the Sheriff & party not to the trover
Sheriff - 24. in Et.

An action on the case will lie against a private
Corporation for an injury resulting from its negligence
3 Hill 193 16 East 616 6 John. R. 90. 3 Camp 1103 4 do 72
3 Hark. R. 50 1 Com. & Payne 193

D It will not lie agst. a Judge of Probate for neglecting to take security
from the guardian of an inf. tho, such inf. has personal estate
If the guardian was a Bankrupt Deed 315

A Judge acting within his jurisdiction is not liable even
for malice & corruption 8 Cowen 148

Case when it lies

Attorneys are liable in this action for neglect or misconduct
injuring their client. Exp 67 21 Lkls. 323. Burr 2040 Fed 86

They are sometimes liable also to the adverse party
for dishonest practices. Exp 618 124. An atty. who had
taken judgment agt a Deft after the original Pl. had
been non-judg^d he is liable to Deft. Nott 125 3 Lkls 377
388. 115 1. 116 209.

" It lies agt Justice of the Peace for refusing to do their duty
Exp 611 1 Burr 323 1 Burr 90 116 97

It lies not agt a justice who has gone out on writ for
not commanding it on return, unless he
promised. 1 Bos 338 2 Lkls 302 / 10 Legal duty

It lies for breach of trust in a bailee. Exp 618 10 R 909 So in all
cases of Bailment on the ground of neglect when the property
is injured for the want of that care which according to the
nature of the Bailment, the bailee requires - or which is of itself
required for 1 Com 208 116 84 1 Co 83 126 26. 1 Com 133
10 R 909. Exp 618

It lies agt owners or masters of vessels for goods lost or injured through
negligence Exp 623. 126 140 10 R Bailment. Public Carriers -

But it is said if the owners be near they must all be joined
as the right of action is quasi a contract. 3 Fed 203

My house is built at the extremity of my land & the adjoining
owner & excavates on his own land in his bound to see that
the foundations of my house are not injured. Feb 28

C.S. 129. where the subject is discussed 3 Summ 394. 1 Holw

1 P. 444. ~~Sturges v. Lidwell.~~

Former action on Replevin taken which was, return void in due to an
action on the case for taking goods which P. had attracted out of
custody of the bank thereby destroying his bail & defeating him of
recovering his debt 18 Cuz 114.

The law implies a warranty that the thing sold is what
it is held out to be & if it is not the seller must
make ~~and~~ good the difference whether he knew of any
defect or not 2 Hord 408. 5 Cuz. 116. 1 Bay 319. 1 H. Blaw. 474
in 9 Ct 110

On a sale of Personal property there is an implied
warranty as to title yet the vendor is not answerable
for its quality or goodness unless there is an express
warranty or fraud 20 Johns 196 2 Chinn 48 1 John
R 129.96 274 4 do 421 5 do 351, 395 13 do 392
18 do 400 3 Bl 451

To constitute an express warranty it is essential that
the affirmation at the time of the sale should be
intended by the party as a warranty hence the
affirmation is only judgment or opinion 20 Johns
149 2 Chinn 56 3 M 57

When an injury results from the negligence of
both parties without any intentional wrong on the
part either an action on the case cannot be
sustained 5 Hill 282 2 Rich 421 12 do 177 10 Bing 111
2 Taunt 314 3 Eccl 2 554 4 do 106 5 do 375 410 421 9 do
601 8 do 163 373 478 2 Dow 128 258 6 E 44 3 Taunt 1
2 Fulk. N P 101b.

in an action in the case for enticing & harboring apprentices
It must be alleged & proved that def^t knew they were
apprentices, 266 N 264 n.y. Stark E. 13/11/11 Peaker C 55 &
Solicted them to leave their masters service 1 Wend
378. Hark. sup.

In an action for seduction evidence of a promise of marriage
is inadmissible & if such evidence is rec^d - then the Judge
instruct the Jury to give no damages as that account
rescent will be set aside 7 March 193 2 do 464 1 John R
299. 2 Camp 519. and 3 Mil. 18

Case for flooring lands must be brought against the
one in possⁿ - & not ag^t him who created the claim
not being then in possⁿ by himself or tenant 18 March
522 47 R 318

Case when it lies

271. Is this a question of fact for the jury?

When a public right is obstructed or violated to the injury of an individual and he may maintain the action / Ex p 100. But he must state & prove special damage. Ex p 100. Inhabitant of a certain place has a right to pass & carry toll free - permission refused to carry his goods but his action stating the common right but not stating special damage - action lay not / Ex 125 Ex 2. Lenth 193 / Is for public nuisance occurring in a common -

Is it lies for an injury arising from a nuisance in gen? Ex obstructing ancient lights / 9 Ex 58 3 Bl 211 1 Vent 234 / But since then it must show some immovables / Polk 40 400 Ex 115 but 1754 before 116 / Liden & S. had 40 years to be safe - but 210 Ex 633 "Presumption of an agreement 2 Sumner 93 1 Bos 400 L 897

If a man having built a house on his own land sells it whether he or any person claiming under him may, and any building which will stop its light - it would be an injury in derogation of his own / Ex 633 1 Bos 122. 1 Com 214 1 Wils 237 / But the first is not correct

But obstructing or prospect is not actionable: matter of pleasure merely 3 Bl 217 9 Ex 58 Ex 633

A house built near a street is on the street side immediately entitled to the privilege of an ancient easement / Ex 633 Ex 633. Is for covering the street so as to obstruct the view / Liden 1754 1 Bl 2 122. 1 Wils 237 / Is it better to build on a house or on a street?

In an action for deceit in the sale of property the Deft
set up a former trial & judgment upon a note given for
the property in which suit he offered to prove the fraud in
the sale of the article sold & on proof given on the one
side & the other the court rendered judgment for the plaintiff
of the note - held that such proceedings were a bar
to the action for deceit in the sale but, by the
provision in the note. Jones & Gurney 1453

If a purchaser can entitle himself to the fraudulent
representations of a vendor & after discovering the fraud
continue to deal with the article as his own he cannot
recover back the money from vendor & the right to
repudiate the contract is not revived by the discovery of
another incident in the fraud 28 C.L. 39

Case when it lies

Our money for a minimum is no better condition $1/2$ 1/3 2/3 than 1/2 1/3 2/3
103/ every continuation of it is a minimum of a non-offense

As the result of a nuisance does not discharge himself by losing, or
abandoning - from actions for injuries arising after losing, & but the tree
\$ 573 & 1/2 (3) / 2 the action has also against the adjoining yr. where
the continuance occasion a nuisance \$ 573 & 1/2 but \$ 573 & 1/2 & 1/2
because where the whole injury is done by the first action -

Non distracting lights activities both improve of before for years &
 convenience but it is an injury to the intelligence & present
 enjoyment. Age 63. Bover-2141 Case C 325 237

So that entire l. is here. unchanging. 1875 house and land so set
out water again. 2 Roll 116 Roll 118 1 Roll 107 1 Com 213 2 Roll.
140 3 Co 101 2 p 137 1 Com 124

As for meeting a manufacturing the vapor of which injures the
herbage of 3 B 26 F. N. B. 184 1 Roll 10 1 Com 213 E. p. 125 1 Roll 89
Bro E 19 9 B 59 1 Com 214 2 Roll. 141

Injuries, affecting persons standing in the relation of M.D. &
wife &c. and. Tip 644 M.D. / Bully 8 bro 3 560 538. Parent /
31111 18 3 Bover 18, 18 2 J. L. 166 D 4 1037 Jellinger / 2 Bover
169 J. P. B 390 2 L. 68 6. 11 131 2 387 Bover 1345

It has a 2^d imperfection by the limit^l - for entering her away
but making a some im/pulse or motion must be shown -
the que arising in that case is material 5 June 1796

The section but in these cases have been in front of top.

One will lie against a Justice who conceivably refuses to take
lead on an appeal for a tho he is to judge of its sufficiency
It is a ministerial proceeding & Mand. 462 Rem 556 1 Rest 115
and Play 315-

If one builds on his own land so near the head of
another that the other by digging on his own land causes
the building to fall no action will lie, unless the
building was an ancient one in which case an
action to its remaining undisturbed may be implied -
but if by building the weight on the soil is not
increased none will lie for then digging the
principles of the above two are 236 2206-

Case when it lies

is not an act, but they are substantially actions in the case
Exp 645 2 M. 167 Sed 206 D R 1032.

If a legal voter tender, or vote of the returning officer
refuses to accept it even his agent him / Exp 647 Sed 19
3d. 1 / at C. L. - So a candidate for an elective office
may have this action agt. the returning officer if the
latter refuse to take or count his votes Sed 646 2 M. 25
Hern 206 2 Lev. 50 3 M. 26. 26. 32

So returning officer is liable to this action in favour of a
candidate for making a false return of the votes at an
election Exp 647 11 Co. 99. There are C. L. rules

Held that it lies not for a false return of the House of Parliament in
favour of P. - cannot be determined on an issue of disposition Sed 502 M. 45. 9
Cromwell 1 M. 127 M. 647 M. 67 G. 275. / The H. of S. W. 8
this action gives double damages for costs.

do against an officer for making a false return to a magistrate Exp 648 Bull 62
3 B. 111

So at C. L. an action may be brought for this action against those who falsified his
work without his permission - 4 B. 111 1303.

Any person who gives or receives a bribe in an election is liable
under the Statute 18 & 19 Geo. 3. c. 36. s. 1. to a fine of £1000 or
imprisonment for one year - otherwise he is liable in the law for
the offence committed by him in giving or receiving a bribe
Sed 491 11 M. 1153

But no action will lie in favor of the creditor of a person who
is insolvent except a third person charging him with having fraud-
ulently taken & claimed the property of the insolvent as his own
to defraud creditors - May 258

An action on the case for fraud or deceit accompanied with
damages will lie by John 182 13 do 226 35 B. 311 1 East 318
2 East 92 3 B. 507 5 do 211 1 Camp 4. 277 1 Day 22 Ex. Representing
one to be in good credit knowing him to be insolvent whereby another
is induced to trust him by Lore 13 N. 173 - vid 6 N. 180 where the
court stated that the second applied to the case of false representation ...

If an article is warranted sound & is not so the vendor
without the consent of the vendor return it & then receive the
contract & vendor binds the vendor paid 4 year 2 Ep 83 Stark, E 445
Contract unless the has been fraud or there was a specification in
the contract to that effect 12 May 23 15 N. 133 7 East 274

3 Camp 299 - Where the contract is executory & a perfect title by
the delivery is not vested in vendor he may on fair trial
return the article if it does not answer the description Ex
articles ordered from a manufacturer but if any
defect is pointed out such article inconsistent with
specification of it no return can be made 22 C. 24

It lies for detaining property. Ex. Sen. officer is presented by a stranger
from executing a writ, by returning the original writ & order &
come lies for the officer in the original writ - Case in Vee
Haverland vs. Ex. 2908 & 693.

In declaring in law no precise form of words is necessary
as there is in specific or former actions. See Reg. 18541 aig.

See also -

In declaration on a warranty the thing need not be returned
on notice given of the defect - Ex 13 16517.

If a chattel be sold for a year, with a warranty, title &
if title is claimed by another by deed & the vendor the vendor
is bound to give notice of such claim to his vendor & disposal such
title before he can assent to his warranty of March 331 & Loran
278

As to the damages to be recovered for breach of warranty of personal
chattels see 1 Tarrant 366 1 Black. 604. & as to damages when vendor
fails to deliver good sold see 8 Tarrant 40 2 B. & L. 624. Off brought a
writ of debt with warranty & sent it with warranty was sent & was
return to debt of the writ. was lost & held that the plaintiff recover of debt the
costs of the action 7 Tarrant 153 22 L. L. 462

In *Shaw* for charging Off with false swearing, when there is
no dispute as to the facts, turn to whether the evidence was
material to the point in issue is a question of law for the
Court & not a fact to be found by the Jury, 10 Wend
450

Words charging the commission of an indictable
offense involving moral turpitude and
artificial, though the offense is a misdemeanor unknown to the common law.

3 Hill 21 *etc.* with some dissipation 5 *etc.*
188 12 do 124 275 5 Cowen 503 9 Wend 141
3 Hill 140

Slander what?

It is maliciously defaming another -
1st. by words written or spoken which tend to injure him
in point of personal dignity, character or office. Judgment on
in text. 11 Ba 1183 4 Co 114 Bull 3 Bl 123 Ex 2196 Cur 2 34

Or 2^d. without words or by figures pictures &c of the above tenor
Ex 496 3 Bl 125 3 Co 125.

By words

1st. Words actionable in themselves & 2^d. Words not actionable
in themselves, but becoming so by - 11 Ba 1183. 2196

The general rule, which is not however apply also to written 4 Co 13

1st Class

Words which are actionable in themselves - Genl Rule. For words
in themselves actionable if they either are words of provocation
the words / some exceptions / for decency is required.
2nd. Words of provocation in fact make the their presumption of
malice may be rebutted by proving that they were spoken under
circumstances which exclude the inference of malice. 11 Ba 1183
Bull 6 184 1183. & 184 1183. & 184 1183.

Actionable words

Words which bring the person of a charge
into danger of legal punishment - 2^d. Slandering a person
from society. 3^d. Injuring one in his house or profession
4th. Slandering a person in his office. 3 Bl 123 Cur 2 184 11 Ba
1183. 1183 - 13 John 1214 -

2. If the person charged with committing the crime is not liable to punishment - at the time the words and spoken the he once might have been sworn whether they are ascertainable - & It stole a horse last year - at which time it was found by H. & H. separated at the time the words were spoken & id 2712 475 -

St. Louis 188
20. 2. 1149

St. Louis 188
St. Louis 188

If a witness when testifying in a material point
Ex. claf. said to witness "it is noted" a request the Court to keep
minutes as he wanted them to prosecute Off 5 toward 573 per
they are calculated to come to the ruin of the ordinary
Hearings on charge of perjury H. Hand 577

4. "suborn, at perjury"
You swore falsely, at the trial of A." see authorities 12 Mj 501^o
do "for sworn before a Justice of the Peace" 3 Lev 166 see also
2 Balla, 38 1 Binnay 537 2 ac 60- 1 John, R 505

Now see. that causing a man for sworn in a court is
actionable without a colloquium of a sort there being
1 Leon 137 Cor E 185 297 609 Hob 283 1 Brown 13
Jctd. 28 n 1 But if the court mentioned has not power
to administer a judicial oath there words are not
actionable 1 Brink 3 3 H. A. 166 2 Binnay 291 want
of ^{power} ~~intention~~ must be shown by 2d 2 Cases & 91 not presumed

Jctd 28.

Punishment.

Words denoting what would subject to punishment, must be a
actionable charge a criminal fact committed. Denying
and intention not suff. 11 C. 18 1 C. 19 1 C. 20 1 C. 21 1 C. 22 1 C. 23
Ex. "I am going to kill you" not intention 11 C. 18 Do
"I expect to see him included for stealing" not suff. 11 C. 18

Do "he is in goal for stealing a horse" not suff. 11 C. 20 1 C. 21
you for words of a similar import have been libelled suff. after
the verdict 2 L. R. 300. 306 -

you "have sworn to a lie for which you now stand
indicted" is actionable equivalent to a charge of perjury
13 C. 18 1 C. 19.

Adjective nouns under this head are actionable or not
as they pre-suppose an act committed or not
Ex. Section 18, this is not suff. for perjury is suff.
11 C. 18 1 C. 19 1 C. 20 1 C. 21 1 C. 22 1 C. 23

"He is forsworn" not actionable unless it be added "in a
judicial proceeding" or in "such a court" 14 C. 18 1 C. 19 1 C. 20 1 C. 21 1 C. 22 1 C. 23
1 C. 24 1 C. 25 1 C. 26 1 C. 27 1 C. 28 1 C. 29 1 C. 30 1 C. 31 1 C. 32 1 C. 33 1 C. 34 1 C. 35 1 C. 36 1 C. 37 1 C. 38 1 C. 39 1 C. 40 1 C. 41 1 C. 42 1 C. 43 1 C. 44 1 C. 45 1 C. 46 1 C. 47 1 C. 48 1 C. 49 1 C. 50 1 C. 51 1 C. 52 1 C. 53 1 C. 54 1 C. 55 1 C. 56 1 C. 57 1 C. 58 1 C. 59 1 C. 60 1 C. 61 1 C. 62 1 C. 63 1 C. 64 1 C. 65 1 C. 66 1 C. 67 1 C. 68 1 C. 69 1 C. 70 1 C. 71 1 C. 72 1 C. 73 1 C. 74 1 C. 75 1 C. 76 1 C. 77 1 C. 78 1 C. 79 1 C. 80 1 C. 81 1 C. 82 1 C. 83 1 C. 84 1 C. 85 1 C. 86 1 C. 87 1 C. 88 1 C. 89 1 C. 90 1 C. 91 1 C. 92 1 C. 93 1 C. 94 1 C. 95 1 C. 96 1 C. 97 1 C. 98 1 C. 99 1 C. 100

Do "He swore falsely before a Justice of the Peace" without a
colloquium of its being in a cause pending is not actionable
1 C. 24 1 C. 25 1 C. 26 1 C. 27 1 C. 28 1 C. 29 1 C. 30 1 C. 31 1 C. 32 1 C. 33 1 C. 34 1 C. 35 1 C. 36 1 C. 37 1 C. 38 1 C. 39 1 C. 40 1 C. 41 1 C. 42 1 C. 43 1 C. 44 1 C. 45 1 C. 46 1 C. 47 1 C. 48 1 C. 49 1 C. 50 1 C. 51 1 C. 52 1 C. 53 1 C. 54 1 C. 55 1 C. 56 1 C. 57 1 C. 58 1 C. 59 1 C. 60 1 C. 61 1 C. 62 1 C. 63 1 C. 64 1 C. 65 1 C. 66 1 C. 67 1 C. 68 1 C. 69 1 C. 70 1 C. 71 1 C. 72 1 C. 73 1 C. 74 1 C. 75 1 C. 76 1 C. 77 1 C. 78 1 C. 79 1 C. 80 1 C. 81 1 C. 82 1 C. 83 1 C. 84 1 C. 85 1 C. 86 1 C. 87 1 C. 88 1 C. 89 1 C. 90 1 C. 91 1 C. 92 1 C. 93 1 C. 94 1 C. 95 1 C. 96 1 C. 97 1 C. 98 1 C. 99 1 C. 100

"You have sworn to a lie" not actionable unless asserted to have
been spoken of & concerning the Off & of & concerning a ~~crime~~
trial & the evidence given by the Off in a trial pending
in a court 20 Johns 344 but if any word was added showing
an intention to charge perjury they, id la continues to 5 March 577

Where the words are being spoken are found to have been spoken
in relation to a part of the evidence given by Off as a witness in
a case or to a particular fact not material to the point
in issue they are not actionable 20 Johns 344

In Hunter for charging perjury to support a justification
clot must give as conclusive proof as would be
necessary to convict Off in an indictment for the crime
14 March 603 6 Johns 118

Punishment

1000

To call one a thief after a judgment is actionable - punishment clear from guilt / Ex 149, 150, 81 - 4 Ba 487 3 & 16 May 23 / Is if the particular theft is proved -

To charging one with having committed a crime of which he has been acquitted / 4 Ba 487 Dec. 150 / There is no charge of punishment -

If the words charging a crime which it appears could not have been committed they are not actionable. Ex. "He has killed C." C being still living / Ex 1108 14 Co 11 Bull. 5. / But this matter must be pleaded in Eng^l, cannot be given in evidence Bull. 5.

If to the words charging a crime a description not corresponding with the crime charged be added they are not actionable. Ex.

Calling one a thief because he had committed an act which amounted to a trespass, only 4 Ba 510. 85 Dec 104 1 Bull. 57
Ex 1674 4 Co 13 Ex 571. 17 Bull. 5 2 & 16 335.

But charging a crime, the the proof of it being by the H. in. at the time the words are spoken is actionable. / 1 Ba 544 /

If words in themselves actionable do not of course amount to proving it lies upon the D^f to show they are used in that sense. Ba 11

If the punishment of the crime charged is in the alternative the words are actionable if the punishment may be enforced. 1 Ba 317. Ex 695 14 Ba 185 Feb. 694. f

X. "then was told of the boy's activities, Bro E. 211, that he had caught it
& carried it home to his wife (Feb 21) / Boston 23 No 47 4.5

It is not advisable to charge me with keeping false books
& accounts unless his claims necessarily lead to giving
credit & a fortune, I am of a modest mechanic
whose business requires giving credit 6 Mond - 1407 17 Feb 21

Declaration should show how the doct^r connected the
imputation or words with Off^s occupation 29 6 L
1. a jury^t will be arrested. Feb R. Q. Standen 11-1260
8 TB 130.

"He has charged his creditors & been horse-shipped" Station of an 207
are not advisable unless spoken of him in his newspaper 32 6 L 348

2. Excluding from Society

Ex. Charging one with having a contagious disease Ex. 498
3 B. 123. Ex. 1144 1 R. 244. 11 R. 219. 1 Dec. 205 11 C. 07.
11 R. 488 1 Com 184.

But this example is certainly under this head must change
a few cent. disease 12 R. 248 11 R. 488 Ex. 1144 X

3. Injuring one in his trade Ex. 4 B. 490 1 Com 182 Ex. 298

Ex. Calling a Lawyer a knave - actionable - 3 B. 123
Hind 186 1 R. 252. 34 2 Vent 28

To "He has revealed his clients secrets" He is no Lawyer!
So in in gen! charging a Lawyer with ignorance in
his profession / Ex. 382 278 1 Dec. 297 11 R. 327 1 R. 252
11 R. 491 1 Com 182: 8 John 184 that the words must
charge a want of skill or industry in gen! or want of
integrity in gen! or particular to be actionable for if
the charge ignorance in a particular case they are not
actionable - Ex. of a Lawyer "He knows nothing about the case"
not actionable 11 R. 252 11 R. 491

In these cases the Lawyer must state in his declaration that at
the time of the words spoken he was a practicing Lawyer
11 R. 252 11 R. 491 2 Vent 28. P. 11 R. 207. 11 R. 313 11 R. 314
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So falsely calling a knave a knave is actionable

Where the wares are of known not of the tender or manufacture
but of the quality of the articles made a doubt is forborne
their utterance, for as they must import that off is guilty
of deceit or mal practice in making or selling or of want
of skill in manufacturing the article 4 Nov 540

3. *Abolition of the slave trade*

28 June 307 m

120. 242. 5

∴ 246 n 4

Ita byb

226181 531

2 to say of a Justice he is forsworn & not fit to sit upon the bench. is actionable without any colloquium of his office for it appears from the words themselves that they need proof of malice in relation of his office. See 280 second box.

Stich Nr 68

Injuring one in his trade &c.

1008

So "He is a bankrupt here" So "he will be a bankrupt in ten days" / 46. 19 May 62 Exp. 499 1 Com 183. 1 Bar 493 Lie 299 Cont. 330 1401. 51 / So "you keep false looks & I can prove it" 5 John. R 476

So to charge him with cheating his customers, & advise not to trade with him 11 Bar 493 2 Bar 62 D.R. 1480 1 Com 183. Burr. 1688.

In certainly, tradesmen in these cases it must appear by leaving a colloquium or otherwise that the words were published with reference to his trade / 4 Bar 492. 2 Bar 604. 3 Bar 605 1169 5 Moot 393 1 May 61. 169 D.R. 147 1/2 "He is a cheat" - here a colloquium concerning his trade is necessary to be laid. But if the words were "he is a bankrupt" it would seem to be left + to aver that he was a tradesman - / 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

x To call on a clergyman a liar is actionable. S.C. Barker vs Bishop. So to call him a drunkard 14 Bar 496 140. 53 - / So to call him a rogue - Com. 1252. 1 Bar 946 -

To call a Physician a quack is actionable / 1201. 54. 1 Com 182 / To say "he has killed a patient" is not to be actionable / Pro 2. 620. If you say it is done "knowingly" "wilfully" or the like. Clinch Justice contra. qu. as it supposes a nuisance in his profession / 4 Bar 491 vice. 1101. 221 where the same

Hander will not lie for words spoken of a person
in the discharge of official duties of the office he
has assumed at the time of speaking the words
7 March 204 3 Mils 188 Ben Hander

Injuring one in his trade &c

words spoken of one apothecary were not even actionable. 1109 1110 &c
to Leungers -

So words tending to injure a Merchant in his trade are actionable
1130 1191. 1198 898

In his office.

Words charging one in an office of profit with want of ability or
sincerity are actionable. 1185 & 1188 Ex. 500 Ea. R. 1296 1608 180
Sal. 893 1101 1105 -

But words charging a person in office of trust & honor / not
of profit / with want of ability are not actionable. 11
Bia 1188 / Sal. 893 "Bodolincus Indice" not actionable / 1198
by Ea. R. 1396 11. Co. 16 Mod. 110.

Charging person in office in either case with inclination
of principles, without disparaging his office, without charging
any act &c. 1101 1105.

When the words spoken do not of themselves import
to have been spoken with reference to the official character
or colloquium is necessary. / Ea. R. 1396 1198 1198 &
1189. 1198 280 / Here if the words themselves contain
a reference to the official character / Ea. R. 1396 1198
1198 / Ea. R. 1396 1198 "Indice" found in 1198 129
that where words have no relation to the official character
they are not actionable. Ea. R. 1396 1198 "Indice" is a common
word -

It should not be forgotten

that the same principle applies to the other side of the coin. The same principle applies to the other side of the coin. The same principle applies to the other side of the coin.

Appendix

The following is a list of the names of the persons who have been named in the preceding pages. The names are given in the order in which they appear in the text.

The names of the persons who have been named in the preceding pages are given in the order in which they appear in the text. The names are given in the order in which they appear in the text.

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In his office.

So generally when the words are not actional the except or they refer to some ^{collected} ~~particular~~ thing which constitutes the ground of action & to which the words themselves do not upon the face of them refer an amendment of a colloquium is necessary. Ex. Insurg of a teacher "he is a cheat" 3 Dec 308 2 Dec 307 Ep 501. Mar 1164.

Colloquium sent by Ep 514 to be necessary where action is called a transference - given no authority cited by Q. p. & uia. 1 Dec 280 where the words are "he is a famous Justice" & Colloquium holds unnecessary 4 Dec 575 / 8. 11 Dec 54 Cro 6 270 196 / Calling a physician "in scholar" 4 Dec 575 / 2 Dec 52 / Saying of a transference "do not deal with him he is a cheat" Colloquium holds not necessary. Sa. R 1480 "He is a house - compromiser" holds unnecessary 4 Dec 240 575. Cro 1710 Ep 502

Innuendo

If the words themselves do not show their own application by ~~application~~ designating in express terms the subject matter or person innuendos are necessary. Ex. The meaning the D. p. 4609

Rule: Nothing which wants otherwise remain uncertain can be reduced to a certainty by an innuendo 4 Dec 516 1164

Where the words do not in themselves, naturally convey
 the meaning intended by the instrument & also where
 they are ambiguous & require explanation by reference to some
 extrinsic matter to make them ascertainable & must be so
 that such matter exists & that the words were spoken
 & concerning *Case 682 5 Edw 220 1 do 605 7 do*
1271 6th Henr 413. 1 Ch. R. 382.

1. 313
42 R 34
9 East 95
5 Edw 210
1 Ch 383
3 Edw 73-

When words have a covert meaning being spoken in an
 indirect manner oblique or ambiguous terms are so used
 that they were spoken with intent to charge a crime
 & be understood by the hearer. *See 15 Henr 282*
West R 425. 5 East 413 14 Henr 321

Innuendo

Not animals. more accurately anything which takes in connection with all that precede before between the parties to the conversation remains certain uncertain cannot be made certain by an innuendo. It can be made certain only by a reference to something said before which is certain. 1607. Roll. 73 Comp. 584

An innuendo therefore can never extend the meaning of the words beyond their proper import. Ex. "I don't love my lawn" meaning a lawn full of corn - innuendo not good - 511 4 C 20 Cro & 8341 But if it be a lawn covered with that ~~stuff~~ I have a lawn full of corn & on a discourse about that lawn. 20th 18th the above words - innuendo good Comp. 285. 184

So the stole process of my own - innuendo - the case which goes on process often it was adfect - innuendo bad. Cro & 838 18th Roll. 82 Comp. 684.

When an innuendo is unnecessary a bad one is superfluous. Ex. "He was perjured" - innuendo - in a witness will exhibit in such a Court - the innuendo is bad but the declaration good. 14 B & 516 Roll 83. Cro & 609 2 Cases 91.

So if the person is uncertain from the words spoken an innuendo cannot make it certain. Ex. "One of the servants of J. S. is a thief" innuendo - "the ^{man} J. S." innuendo not good 511 4 C 17 18th 52 Cro & 497. Roll. 2. 45

"Who stole the parish tolls upon Scamper road" an innuendo
showing that they were intended as a charge agt the P^r is
necessary 29 C.L. 374 But these words are not conclusive
for the construction of what they were spoken having
the perception of the goods as contradictory to the
charge of them as in case of a common servant do not
imply larceny 29 C.L. 374 Handb. App. p. 44

Innendo

Altho the meaning of words cannot be enlarged by circumstances yet they may be aided by the plea so as to support the declaration - Ex. D^{ft} in his plea alleges or confesses that he spoke the words by reason of a false oath taken by the aff. in a court of competent jurisdiction - It will aid the want of a colloquium concerning a proceeding in a court of competent jurisdiction - 8 John R. 109.

When action is brought for words tending to injure in trade or profession or office, it must appear in the declaration that it was at the time of the words spoken of such a trade &c. / Ex. 304 Rule 49 / That "if he, been a merchant for many years past" not sufficient / Ex. 1774 Lamb. no judgment / Ex. 2052 / Cases contrary 41 Bar 513 2 John. 159 / Ex. 275. / Ex. 222 / Ex. 282 / 1 Wils 1125 / 2 that he should be presumed to have been a trader

In an action of a trader it must be averred that he was trading by buying & selling at the time / Ex. 315 / 1 Wils 299.

Words of heat & passion are not to be considered / Ex. 520 / 4 Bar 522. / 1 Wils 109. / 3 B. 185. / Rule: When they import no definite charge as "Anger & insult" &c. & perhaps when wantonly uttered by M. because D^{ft} in a passion of unprovoked anger & other actionally was 11. 2 & R. 335. / Benke 4



Findings. Construction

Rule of construing words in relation to each other. They are to be taken in that sense in which they would be naturally understood by the hearers. Ep. 511 4 Bra 247 Eccl. 588 278 Bull. 4. Matt. 198. Mark 12 P. 6 & 11. 2. Moe 129. L. 1161 & 2. 1163. 464 R. 36 q. 2. 93 -

When words in themselves are liable to an innocent meaning it has not to be shown that they were used in that sense. Proke 4 18 in 507 2. 8 R. 335. 1. 1161 R. 279. 3. 180. It has in such case required of how he understood them. Smith.

Handsome words in a foreign language are certainly if understood by one of the hearers - sense int. 4 Bra 248. 1. 1161. 74. 1. 1161. 116. 126.

All the sentence is to be taken together. [Ep. 511] for the subject. words may explain the former so as to prevent of handsome. and more of a description added. 11 Co 19 Bull. 11. 2. Moe 157. 2. 1161. 116.

Courts will not do violence to find an innocent meaning. [Ep. 512] Ex. "Your wife died of a wound you gave her". Suff. tho the wound might have been given by accident. Gilb. R. 243. Bull. 4.

So a forced construction not given to words to make them admissible when they have an innocent meaning. [Ep. 512] as of a house. "He is a common intention of suit". 1161.

my watch has been stolen & I have reason to believe it took
it" are admissible & Strong J. Miles & Miles "I am thoroughly
convinced that you are guilty" 2 B1 R 961 Oldham 11
Prake equivalent to a direct charge as where the words
were, "Many an honest man has been hanged as a villain has
been committed & I think he was at it & I think he is a loose
stealer Bro E 349 Sticks Wisconsin

A. Parker must show malicious intent in Def. the the
word "maliciously" need not be used Moor 459 Oio. 51
Said in Sty 392 that in a civil suit it is not
necessary to use the words "falsely" or "maliciously"
but is in an indictment - such declaration good only
Said after verdict - 18 Ann 242 n 2

Construction

Genl. Rule the words to be actionable must import a direct charge of a slanderous nature - not by inference
 1 Ep 512 / Ex "I. S. got his money by swearing & perjury"
 not actionable 4 Co 15.

Yet where the intent ^{to charge} is clear for any thing else the
 of which the charge is actionable / is clear the words
 are actionable tho somewhat indirect / Ep 512
 Bull 4. 1 Co 185 / Ex. I will make you an example
 for a perjured knave" / 1 Roll 49. Yetot. 110 / So I will
 prove that he poisoned I.S." / 1 Co 185 1 Roll. 50
 Cro & 569 1 Sid 381 1 Vent. 276 / So "when will you
 return the sheep you have stolen?" actionable. 1 Co 185
 1 Roll. 48 2a. 155 12 Co 134.

In declaring it is usual to state "falsely & maliciously" &c.
 & "maliciously" seems not necessary / 1 Co 195 2 Reg
 512 1 Keb 273. Ray 35 Tw. 51 / Qu. if the words are not
 in themselves actionable / for malice is prima facie
 implied - a direct intent that the words were false and
 necessary - "falsely published" suff. Ep 516. Bull 8.

Declaration usually states that D is of good fame &c. 1 Co 195 / not
 necessary.

Alleging that the words were spoken ^{"openly & publicly"} & maliciously

So if the words were spoken in a foreign language Off. must
 aver that the hearsers understood such language
 11 Mo 268 Cro & 865 1 Ro 74 / not necessary to translate
 the language 11 Mo 126 1 Mo 86 / Court will inform
 themselves by those who understand the language -
 & if wrongly translated by Off. - It may be fatal -
 8 Ty 236

Cro. 486
 Cro. 199
 Cro. 39

If the person making the privileged communication knows it
 to be false & adopts this method to gratify his ill will he may
 be subjected on proof of express malice 11 Mo 137 2 Ta 23
 4 do 420

It is not necessary to aver in the declarⁿ that the words were
 spoken maliciously suff^t to aver that it was felony, and
 injuriously done 11 Mo 136 6 Dow & Ry 303

There is dopt^d belief in the truth of the words any justification
 11 Mo 136 7 Johns 260 5 Dow & Ry 462

Evidence that dopt^d was told by a third person that Off. was guilty, &
 is inadmissible - do of govt reports unless in mitigation or to
 show want of malice 11 Mo 659 3 Pick 378 11 Mo 514 5 Mo 256 252
 500. 7 do 620. 633. 11 Mo 101. 2 do 244 2 Camp 257 2 Pl 110
 11 Mo 4 Mo 606 15 C. L. 476 11 Mo 21. C. L. 71 (that dopt^d & was
 his condition at the time of speaking no justification

Malice what?

supp. without saying "in the hearing" &c. So in the presence of
devis person's supp. 4 Ba & 12 Cro & 861. 286 May 87.

Malice what

The generally actionable words *pericia facie import malice*
the presumption may by circumstances be rebutted.

Ex. In case of confidential communications which exclude
the probability of malice - as declaration of a secret given by
a person in confidence or reasonable enquiry the facts malice
must be proved. Buss 2422 18th no Bull. 8 Cro 791
11 Co 91 Exp 302 & Exp 6 no. 201 3 Bos & 388. 3 Exp 6 14.15 given in

To whom one confidentially & by way of warning to
another said "he will be a bankrupt soon" the words were
between not actionable tho special damages were stated
Exp 503. Bull 8 5th hearing. 11 Co 392

The retaking of slander perpetrated by another generally is
actionable / Exp 507 Bull 10 / locus if he truly names his
another at the time / 12 Co 133. Cro & 4100 3 Bull. 225. 11 B & 7
2 East 426 / see also note below. Det. Hamelin - Cro 307 Bull 10

But circumstances are carefully to be regarded as to
the intent. Ex. he who said in the first of concern
said "I have heard J. H. is hanged" 11 Ba 478 18th 22. 4th 14 Bull. 10
Deft. suspension no justification. Exp 508. Cro & 508.

Every act imputed in itself a injury to another
is presumed in law to be done male animis & this
is an act that is excused by a charge of malice in the
charge" 4 Wend 137. 5 Dow & Ry 462.

The question of malice is never submitted to the jury except
as to damages & in privileged communications 4 Wend 138
6 Dow & Ry 296 for if in making a privileged communication the party
is actuated by malice the nature of the communication affects no protection 15
C. & L. 21 Bull. & mid to be excused on the ground of privileged
communication defendant show that he was not actuated
by malice 29 C. & L. 365

Malice what.

Words extorted by pressing or pressing questions by P.
himself are not actionable. Q. "Have you any I am
perjured?" - an. "Yes if you will have it." 4 B & C 81 Dec 1822
4 Co 14 Crd Eng.

The genl. issue is in Eng. a denied either that P.
spoke the words or that they are actionable for want
of malice or in case of confidential communications
1 H & M Bul. 8 Exp. 503. 1 Lev. 82.

In Ct. the genl. issue includes all defenses / even that the
words were true or otherwise justifiable / except such as
arise from some act of P. amounting to a discharge -
The genl. character of P. as to the crime charged by
the words may be proved in mitigation of damages -
1 Red. 354. 451 / But other particular acts of the same
kind as those charged cannot where the charge
is of particular acts. Atwood Atwood S.C. 1807 vide Bul
256 Peake & 2. b. / Less where the charge is genl. -

In Eng. a special justification must be given in evidence
unless the genl. issue. Exp. 578, 4. That the words were true
14 Co 16 5d. 125 H & M 1200 Doug 373 Lush. n / In Ct. it can always

In Eng. the truth of the words cannot be given in evidence
even in mitigation of damages / H & M 1200 Exp. 318 Bull. q.

6000 22000
The words must be set out in the order in the language
in which they were spoken with an account of their
meaning in the English language otherwise they cannot
be substantially proved as laid for proof of words of a
similar import will not answer. 3 Mand 394 6 Com 76
Stark. on Hand. 35. 308. 3 Ellensdale 110 100 E 645 496 365

def under the seal if you may show any thing is evidence
to support motive which does not imply or tend to prove the
truth of the charge 4 Mand 579 7 Com 633 3 Ct 466
4 do 414 4 Mand 662.

Headings &c

Bull. 5 cited contra. The truth of the words is always a
good justification / 4 Bu 516 1 Rott 87 / Bull. 57 cited contra.
In some cases a man may justify the the words are in
themselves actionable & false as where false words are
published in a Court of Justice &c. In a declaration
not by 2 R. 1. 117. 21 Bu 497. 318 1 Com 194 4 C
14 4 C 230 48 1 Rott 82 Bull. 113 1 Rott. 43 3 Leon 138. b
Arg. 285 / In articles of peace. 3 C. 1 words used in
giving charge do not bear a fine.

But if a charge is not cognizable by the jurisdiction
to which the action belongs and then not justifiable. 1 R 303
4 C 15 4 C 230. 48 1 Rott. 204 1 Rott. 34 1 Com 194. See
qu. 2 Suta. 137. 1 Rott. 137. C. 3 p 8 Saund 132 n. 4 C 142
3 C 109. 100 n.

To if the person charged in such declaration. He exhibits an
oath, may justify saying that the commission is true
sworn falsely for there is in his defence in a Court of Justice
2 Bu 497. 318 1 Rott. 87. Bu 807. / He may say a witness
is perjured by way of objection to his testimony 1 Com 194
1 Rott. 32.

Slanders words in a complaint to a Justice or a
magistrate or in an indictment not actionable. / 4 Bu 497. 4 C
247. 3 Leon 138 4 C. 14 1 Rott. 82. 3 Rott. 32.

In an action for a libel If may abandon any part of the
libellous matter in any one count if suff^t remains to support
the action & may use the part so abandoned to show
the mischievous of that retained. 1 Saund 207 n 2
7 Johns 128 9 East 93. 46 R 11.

Sells 552 that where there off fault doth where he speaks the
words & where he pleads in justification he is bound to come
to believe they were true this misdirection of off goes in
mitigation of damages - see 3 Pick. 377 unless doth admit
he was mistaken

In Mander of title the particular & special damage
must be set forth 32 Ld 161

Pleadings &c.

to of records used in a petition to a Legislature for
rehabilitation of prisoners delivered to the members of the
131. 2d Jan 138 4 Co 144 Not 82. Born 810 5 Feb 1100

1882

To 1st words used in pronouncing the sentence of a Court Martial
 Ex. That the charges were false medicines & malice & ground
 no libel - / 2 N. B. 241.

This if one feels ^{it} is without foundation or probable cause
 exhibit a ~~unpleasant~~ article for medicinal propⁿ will be -
 4 B. & 200 /

To in genl. in the above cases of complicity &c if the course
of justice is made a more death per malice action for
malicious proc^{ess} Lib. Sent. 24. Bea 500 3 Bl. 126 Pinch
305 H. N. B. 116. qu. as agt^s grand jurors

Handwritten words of mine to a witness are inquis. not ammittable
11 Dec 499. 518 Cr. 230 2 B. 1st 259. Thence 11. But he is
liable as the case may be for forgery.

But if he goes beyond the space of standards a third person
he is liable, & I say a Court! If he so standards, or barely is there

In -

A report of any judicial proceedings must be strictly
confined to the actual proceedings before the court
& must contain no defamatory observation from any
quarter in addition to what forms strictly & properly
the legal proceedings 32 C. L. 403 3 B. 211, 702

Different sets of words importing the same charge & laid
in person at the same time may be included in the
same count 6 Mod. 407 413

Readings &c.

no remedy?

If a witness in testifying change another with having testified falsely no action lies. 1 Burr. 518 1 Cowell 131 4 Burr. 518 1 Cow 194 2 Burr. 807.

So that the words were spoken by Deft. as would in a case is in some cases a good defence & justification - in some not 1 Burr 518 2 Burr Bull 10 Cr. 191 3 Cr. 110.

Rule. When the words the facts are pertinent to the case suggested by the direct &c. is not liable Cr. 517 1 Cow 194 4 Burr 498 518 Cr. 191 But if the words are impertinent the suggested & ~~are not~~ the direct &c. being pertinent are not suggested - qu. re action lies 3 Burr 129 Cr. 191 Cr. 100 to a witness giving in his testimony that it was a mistake - for it is not a charge of perjury 5 Burr 182.

Most of the books however make no difference between them being suggested &c. not suggested 10 Bull 10 Cr. 517 1 Bull 87 1 Cow 194 1 Bull 33.

It has been decided that for the purpose of mitigating damages in favour of a direct and adequate measure of damages words not pertinent 14 Burr 498 Hob 328 1 Bull 87 qu. re a defendant can show 1 Burr 498 Bull 10

after verdict for Off. the Court are bound to presume
all matters necessary for him to prove in support
of his declaration & no more. therefore where a dect.
R-dept¹ with having said of Off. "he has been guilty
of wilfully setting fire to his own house" jury¹ was
assisted for the Court will not presume the existence
of such facts as make such act criminal 27. L.S. 24

Pleadings &c.

10217

that an advocate is never liable for slanderous words in
defending his client's cause. It is his duty - provided that
he was influenced by his client. Ex. gr. Late multiplication, as
not mention the true rent cases -

When there are two counts one being in action and the other word not admissible I am left to the whole sentence demands are given justly will be considered as sense do more answered 8 Inst 541. Now if the words are all in one count - 10 Co 130 3 Inst 47. Cro E. 78 10 Co 131 R 508. 532. perhaps in Ct. they are said to have been spoken at diffⁿ times Bull. 5 2 B. 7. 1 Root 346 183 11 Co 131. 5 353. 350

In actions for wrongs not in the character of a tort, special damages must be stated. This is the gist. L. p. 320 & 321.
130 Bull. b. 7.

So when the words are ordinarily the opposite state & are
opposite denunciations but in this case he can prove in other
opposite denunciations than what is specially stated Bull. 7. Thus
he may prove genl. denunciations as loss of customers in genl.
such denunciations being found. gen. Bull. 7. Ep. 320 8th 133
1808. 58. 1 Camb. 199. Prob. 616. 2. R. 6154. 133 quod in

What amounts to an obligation of mutual security, viz. the
bbs Bull's Bury 290 84R 130 1Katt. 58 100.376 1Katt.
24. Cro 8499.

But when the words are put in themselves, as in the following

Where the said D^r to have been spoken in hate to the Aff^r
the crime of perjury without any qualification or explanation
not to make out a justification need prove that Aff^r in
giving his testimony wilfully & corruptly swore false
20th Column 351 not suff^t to show that the facts rec^d to
were not true thost it proceeded from mistake or mis-
apprehension - 20th Column 351

Readings &c.

1028

that special damages might be proved under an award of
of good damages. *See 5 B. & C. 198. 92. per Bull. 1028*
1290. *Ex. 520 & Contra 10 Johns 281*

Immediate what the facts were in if they are malicious
& occasion special damages. *Ex. Casting a single woman
in court - with, being a slut & by which she loses a
match. 21 Bar 496 21 Co. 7.*

In case of slander, being a title / word is called / or calling
an heir apparent & existence it is suff. to show a real
or probable damage - in case of *Ex. Damages to a
title 4 Co. 7 as heir / Ex. 501 See 1213. 21 Bar 194 1 R. 11
38 / Ex. 4th Edition has signified a design to disinherit. Suff.
also that the words tend to disinherit. 4 Co. 7 Ex. 510*

The recovery of damages is a bar to another action for
the same wrong. whether the wrong was continuous or
not. *Ex. 519. Bull. 7.*

Formerly necessary to prove the words twice as said -
1st. now to prove the substance 1 Bull. 5. 2 R. 18 Ex.
321. / But the same necessity must be the same *Ex. 521*
Bull. 5 11 R. 21 8a. 15c & Johns R. 11d 54

In actions of slander in quest. after proving the words stated
may give evidence of other words of a similar kind & taken
at another time & even upon actions but, being to be in
aggravation of damages *Ex. 518 Bull. 10. Contra. But*
this cannot be the principle per. 1st. & 2nd. not continuous

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Conte -

Page 125.

. 22

Off. may prove any thing, or induce of matter in dept
except what would be the subject of another action
32 C. L. 461

So Off. to show that he is not negatively peremptory,
the suit may show that he offered to compromise
32 C. L. 461

Off. who is justify a charge must justify as to the specific
charge but cannot set up a charge of the same thing but
different as to the subject matter 11 John. 38 C. L. 677
18 R 727 4 C. L. 33.34 -

Readings &c

may be thus proved. See. Words actionables / which also may be
thus proved / one a formal action for a distinct action. See. Words
spoken at the action but may be thus proved. The tendency is
to show malice. Bull. 1. Ep 520. vid. the bps.

But when words spoken at another time are given in evidence under
this rule Diff. may prove them true to what the inference is. 518 Bull 10

When words not stated & spoken at another time are proved they
must be similar to those charged. Ep. 520. And the same words
only. Bull. 10. / words similar. Ep. 518

Our Courts have always insisted proving like words at diff. times
spoken to show malice. / 151 / I excise both can. / p. 100.

King H. dies, as to Hancor - 2 years from the time of uttering it. H.
explains only to certificates words. Ep. 519 13. c. 95.

Our H. insists the action to three years. does not extend to words not
actionable - formerly necessary to prove the words first, not as
before - but now to prove the destruction / 1021 / The measure
must be the same - the person of person must not be
changed & Idem 274.

A joint action of Hancor by a defendant two will not lie. Burr.
984 Ep 504 Bull 5. 1 Com 195 Ep 14. 42. 54 4 Burr 11 246.
120 / not a tort which requires an act / sed q. in case of
parties who have sustained damages in consequence of
Hancor concerning their joint business. I think it will lie.
Bull 5 3 Bl. 117.

Signature

If the libellous paper is in the hands of one who is not
 obliged to produce it no perjury testimony can be given
 of its contents - 2 Byles & New. 31 Gray & Portland

Any thing in a libel tending to bring a party into contempt or
 ridicule & in good any charge of immoral conduct in matters
 not punishable by law is actionable but in oral slander
 the matter charged must be of a criminal nature or such
 as falls within some of the rules relating to that species of
 slander - 4 Bait. 358 15 C. L. 357

Sec. 25.
 Hanc 470
 Shriv. 123
 2 Hils 403
 1 B. 748
 2 New. 313

Sibels

1123

Nature of 1st. Libelious words, would be actionable if spoken are clearly so when written. Exp 504 3 Bl 126

But written slander is a more aggravated injury, as having a more extensive circulation & being always deliberately committed. 3 Ba 490 3 Bl 126.

The rule does not always hold & converso yet Exp 504 3 Ba 490 it differs from slander by words in this only, that is - it is delivered in writing or printing. vid. 3 Bl 126 -

Perhaps his meaning is that words which if spoken would not be slanderous are not slander when written tho they may be actionable as libellous - If this is not his meaning the rule is incorrect -

Any malicious defamation of a person living or dead made public by writing &c. tending to excite resentment or expose the object of it to odium contempt or ridicule is a Libel / 4. W 124 1 Hall 193. 352 11 Bl 150 3 Ba 490 / Opinion seems chiefly to have been formed with reference to Libels written as a public offence - Ex Dead person - exciting resentment.

Remedies. Two. 3 Bl 125 3 Ba 492.

Said the gen. rules relating to oral slander apply to written or libels as civil injuries / gen. Do the negative rules as to oral slander apply? Ex to charge with crimes. Exp 504 3 Bl 126 208 Hux. 198 3 Bl 126 -

45

454

4. But we cannot find a way to ascertain if there is an
 ex. since field includes 52, 109, 125, 130, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 9

Libels &c.

1024

But nothing is constitute a libel which is necessary in the course of legal proceeding - & is a declaration &c. *Ex 515 2d. Bun 89*

x No action lies for publishing a true account of trial in a Court of Justice tho' the ^{the} character is injured by it *1 Bos 825 5 T. 6 110. n. 1d. 458 C 8 R 293*

In a civil action the truth of a libel or of words not written is a justification *1 R 748 4 Bl 150 16 d 253*
2 Mac. 166 11 d. 99 3 Bl. 125. Bull. 89. / some holden contrary
4 Ba 316 3d. 475 -

But in a criminal ^{judgⁿ} the truth is no justification
13 Bl 125 4d. 150 5th 498 5 Co 125. qm 3 Ashm 337.

The falsity imputes the guilt / *4 Bl 150 2d. 4 & 158* True is the bad reputation of the person libeller any justification
2. H. 649.

It is sufficient to constitute a libel that it be published. But writing it originally seems to be suff. tho' dictated by a third person. *Ex 510. Coats 1105 5. Med 163 2. H. 442.*

But merely transcribing without shewing it to any one is not a publication *1 Ex 510 9 Co 59.* But it is evidence of a publication if the libel be made public qm as to the first rule *3d 419*

But conveying it - reading it after he knows the contents - passing it to be conveyed - delivering it to others after

27 d. 1812
The def^t without plea cannot give in evidence the
truth of a libel 2 Str 1200 1011 20 11 Price 235) yet
yet where it is necessary for Off. to prove an allegation
in his dect^r def^t under the g^d. if he may dispute
the, such proof establishes the truth of the libel & Off
advised that he was carrying on a lawless trade
def^t was allow^d to dispute it tho, the libel was
published concerning such trade 20 6 L 161-2 Str 559
4 Apr 191

It does not indicate damages, that the same libel has appeared
in another paper from which def^t copied it but def^t may show
that in copying he omitted parts respecting an Off character
32 6 L 438

after he knows &c. amounts to a publication in Law for to be
willfully or wrongfully instrumental in making it public
is to incur the guilt of actual publication Ep 510 9 Co 59. 5d.
125 3 Ba 497 1 How. 195.

The sale of a Libel by a Bookseller &c. is prima facie evidence of a wilful
publication - Once on the seller 2 Mc N 644. Barnard 306 3 Ba 497
12 Vin 229 Ep 510 Burr. 2687. So of a sale by a letter sent. 2 Mc N 644

So printing is prima facie evidence 2 Mc N 643 Bl R 1038. So sending it
to the press for publication is a publication in Law & the person sending
is guilty of publishing where it is printed. Fortesq. 201 Ep 510

Sending it in the person of another is a publication. Ep 510 3 Co 123
Burr 2666. But repeating part of a libel without making new
been held to be no publication Ep 510 Mo. 627. 813 1 How. 196 9 Mc N 644

Sending it to the person who is the object of it suff. publication for
a public person 4 Bl. 250 1 How 195. 3 Ba 497 Ep 506 10
Poph 130. not for a civil action 16 Co 62. 215 12 Co 35 1 Mod. 58

If the letter was a friendly exhortation is it suff. for a
public person? - I conceive it is clearly not actionable
Are all libels which will support a public person actionable?
3 Bl. 125 3 Ba 492

Words written are never true actionable when they would not be if
spoken. 2 H Bl 532 arg. 1 Ba. 331 Barnard 120 2 Show 313 1 Mod 58
1 H 552 arg. 1 How 874. 3 Ba 492.

Writing & publishing any thing falsely which makes a man
ridiculous or infamous is actionable 3 Ba 492. 2d edit. 403. Ba 331/
Sely Carver Ins. "ogue" or "sawdust" suff. 2 edit 4011. 1123

To say or to insinuate that a (Maliciously) Court
of Justice have judged wrong is libelous if in writing 2 BR 205 per Bull.

When the plea avers that each specific statement in the
libel is true each must be proved & not suff. to prove
facts of the same kind 11 C & S 397. & a plea alleging
that the statements in the libel are true in substance is
bad 1 BR 748 1 Taunt 543

If an action for libel stop every show in mitigation
that he was provoked to issue the libel by publication
of the Off. reflecting on him. but he must show that
such publication came to his knowledge before he
libelled the Off. 34 C & S 82

Stiles & Co.

102b

God disturbing domestic peace. Ep. 505 / To writing or printing of one
that he is a murderer is criminal. 11 R. 548 / Lewis / 8 / 10 Nov 21 / 1853.

The offence of the issue of a libel was considered as repeated in every
stage of its circulation - therefore were not charged in Reg.
11 R. 548 but 11 R. 178

In the printing exp. only the initials or one or two letters of the
name of the person agt. whom it is intended - or signed where it is
a libel the manner being such that it must inevitably refer to
the person 3 B. 498 1 H. 194 Ep. 506 2 L. 170 9 L. 114.

Without writing - Publishing a yellow before one, or charging him
in office - Ep. 501 56. 125.

Representation is ignominiously by pointing to 3 B. 491 / The application
of the slander must always be made by a man of a reasonable
degree of special damage shown - This notice is not sufficient in itself
Ep. 511 3 B. 125 / Otherwise not understood to be libellous at all.

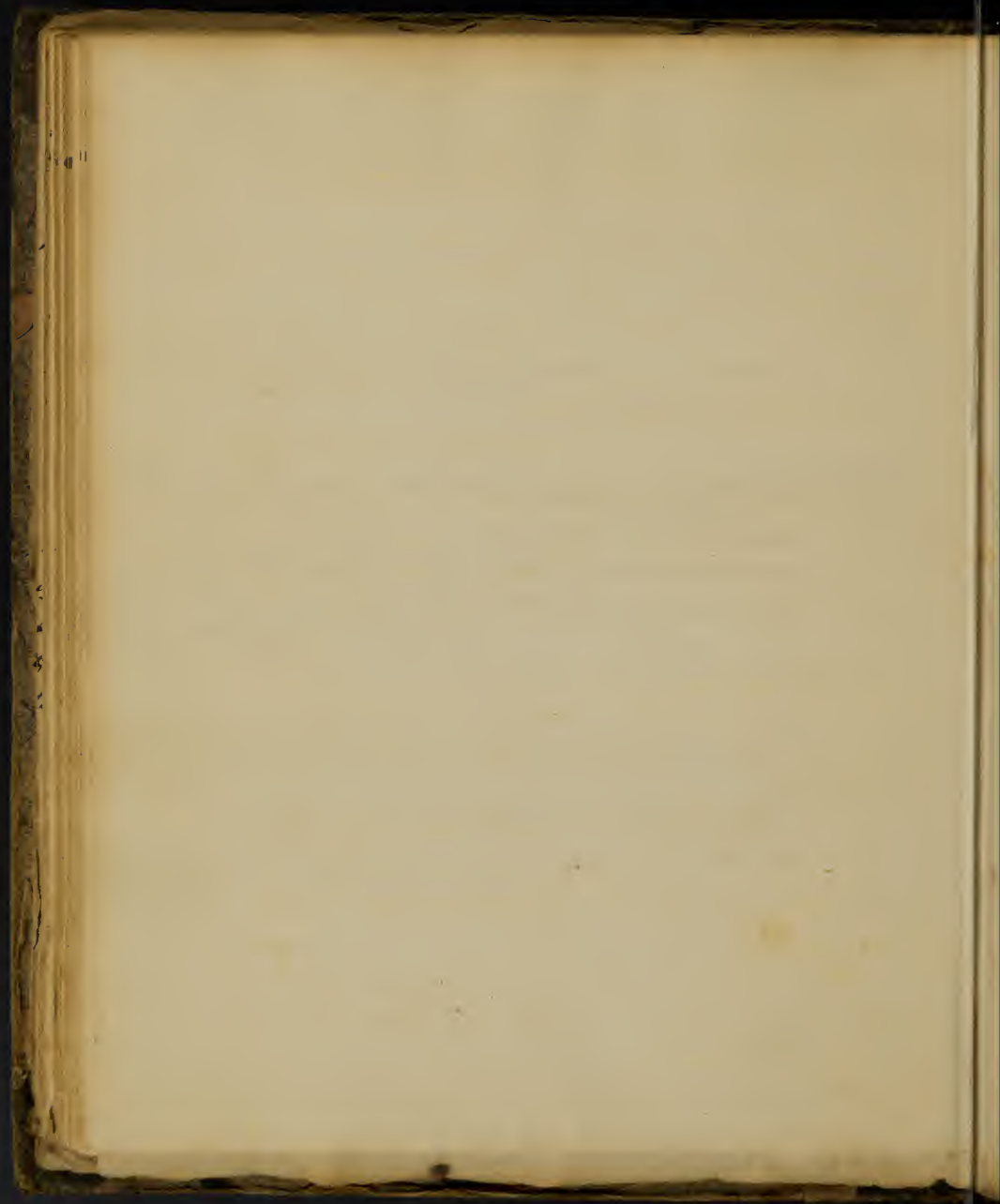
By our St. 227 common Nomenclature is punishable as a public
offence - fine not exceeding 5 s. 4. to the county treasury - unless
inflicted - Defaming a Justice of the Peace is punishable
disfranchisement in Parliament.

2. 12. 17

THE HISTORY OF THE
CITY OF BOSTON

FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
BY
JOSEPH NEALE
OF BOSTON
IN TWO VOLUMES
VOL. I.
BOSTON: PUBLISHED BY
JOSEPH NEALE, 1825.

The history of the city of Boston, from the first settlement to the present time, is a subject of great interest and importance. It is a city which has been the seat of many of the most important events in the history of the United States. It is a city which has been the birthplace of many of the most important principles of the American government. It is a city which has been the center of many of the most important movements of the American people. It is a city which has been the home of many of the most important figures in the history of the United States. It is a city which has been the scene of many of the most important events in the history of the United States. It is a city which has been the seat of many of the most important principles of the American government. It is a city which has been the birthplace of many of the most important principles of the American government. It is a city which has been the center of many of the most important movements of the American people. It is a city which has been the home of many of the most important figures in the history of the United States. It is a city which has been the scene of many of the most important events in the history of the United States.



Estates upon Condition

An estate upon condition is one which depends upon some uncertain event by which it may be created enlarged or defeased
23/152. Co L 201.

Of two sorts - 1 Estates upon condition implied
2 upon condition expressed under which last division are
estates holden in fee 23/152 -

Estates upon condition implied

are those to which some condition is annexed from the nature & nature of the estate itself - the not expressed - Ex - Grant of an office - condition implied that grantee shall duly execute it - perfected if not duly executed 23/152 - Litt 273.

So is a condition tacitly annexed to every estate that the owner shall do no act incompatible with the estate which he holds - Ex - Tenant for life or years enfeoffs a stranger in fee - his estate is perfected 23/153. Co L 215

Estate upon condition expressed is one to which is annexed some express qualification by which the estate is to commence be enlarged or defeased - 23/152. Co L 201.

Conditions

Of two kind one either precedent or subsequent - Precedent are such as must happen or be performed before the estate can vest or be enlarged -

Subsequent are those by which an estate already vested may be defeased - Ex - an estate granted to be to

Estates upon Condition

last on his marriage is a condition precedent - But if an estate is granted to A - for a certain rent with condition that if not paid grantor may enter & claim the estate - the condition is subsequent.
28/154 - Litt 825 - CoL 297

As this head see separate case fees
2 fees conditional at C.L. 28/154. 159

In the last case if the rent is not paid the grantor cannot recover the estate at C.L. unless he demanded the rent on the day. 18217. CoL 201
740 28 CoL 870. 828 56040

Distinction between one & the other condition
in fact - & a limitation (which is called a condition in law -
"So long as" - "while" - "until" - are words of limitation -
"Upon condition" - "so that" - "provided" are words of condition in deed. 28/155
Litt 780 342 41.

If the qualification annexed is a limitation on the contingency - If happening the estate ceases immediately & of course without any advantage to him who is next in expectancy. 28/155
342 41.

But if an estate is strictly on condition in deed the law permits it to endure beyond the contingency unless the grantor his heirs or assigns take advantage of the breach of condition by entry or claim - 28/155 - Litt 847.

If however strict words of condition are used yet if on breach of condition the estate is limited over to a third person the qualification is called a limitation - For if a condition the estate would be avoided only by the grantor or his representatives - so that the remainder

might be defeated by their neglect - Ex - grant to A on condition that in one year he marry - on failure to do -
- Solemne to testator's heir at law remain in over. 221 155
Hant 202 - Cro 2 205 1 Roll 411

If a lease contain a clause that lessee may re-enter for non-payment of rent - actual entry is not necessary to entitle lessee to ejectment - the petitionary entry compelled by D^{ty} in ejectment is sufficient. Doug 460 D.C. 350
Sol 259-

An express condition that lessee of a term shall not assign -
- good - firmly established 2 H 128 - D 80-1 2 Attk 219. 1 Bl. 2766

If a lease is made to A "his Ex^{or} & assigns" with condition that his Ex^{or} shall not assign - Is it good? since the Ex^{or} takes only for the purpose of satisfying claims against the estate - 2 H 140 - 2 D.C. 425. 12 -
that it is good -

If one holding an estate for life or years on condition that he shall not assign or attempts to assign by deed which proves to be absolutely void for the want of requisites - the estate is not forfeited - 5 H 641 -
or condition that if lessee becomes bankrupt lessee may enter de-i-jud against the assignees - 2 H 133 - D 61
En 684 2 Attk 219. So if it is provided that it shall not be taken in ex^{or} against lessee - same -

If an express condition subsequent annexed to an estate be impossible at its creation the estate is absolute in the tenant - Ex - grant to A on condition that he marry B or C or D - So if B become impossible by

Estate upon Condition

the act of God or of Man - the estate becomes absolute - As condition that grantee marry within a year a person who afterwards dies within the year - or when the feoffor himself marries her - So also if the condition be against law - or repugnant to the nature of the estate the condition is void & the estate absolute - As condition that grantee shall kill a man - or that grantee in fee shall not alien - conditions void in these cases - 23/157-

But if the condition performed is unlawful or impossible - the condition being void the estate also is void - for it depends upon the condition - & therefore no title can vest till that is performed - an impossible act cannot be performed & the performance of an unlawful act implies no right 23/157- Co L 206-

The performance of a condition is matter in point provable by parol evidence
Bar 54 - Term 4090

Under the head of estates defeasible upon condition subsequent full estates holden in pledge 23/157-

there are of two kinds

I Vivumadium - or living pledge - that is - an estate granted to a creditor to hold till the rents & profits shall satisfy the debt - 23/157- Co L 205

In this case the grant becomes void & the estate determines as soon as the debt is thus satisfied - Hence called a living pledge for the pledge unincurs the debt & on the discharge of it reverts to the grantor - the debt - Bar 711. 2. 4. 23/157

Lo being the parent & I having pledged & give a lien on
S^r house is a mortgage & not a pledge & on failure to
pay the mortgage creditor can absolute interest
it being a mortgage of personal property & can
assign^t if the debt at any time becomes all
interest in the property to assignee who alone can
sue him therefore 9 March 80 5th Dec 96 9th Dec
290

And if by any agreement the debt does not accompany
the security assigned it is also forfeit & extinguished
9 March 44 5th Dec 202 2 Dec 978 1st Dec 590
4th Dec 43 Per m 1115.16

Grantor of land has an equitable lien upon it for
the purchase money, altho he may have taken the
personal security of buyers - 1 Paige R 20 1 Ann 267.
2 P. M. 291. 3. M. 272 1 Edw R 211 1 Bro Ch. 123
6 Mas 475 752 3 Do 181 15 M. 329 2 Mas & Den 306
2 Doell & Beatty 514 - 1 Selw Ch 208

This lien is waived by express agreement -

2. Where security is taken on the land sold or otherwise for as
much as the whole of the purchase money 1 M. 214
4 Wheat 290 - (3. If money sold to a third person
without notice 1 Paige 20 - 3 do 514

Mortgage

A mortgage is an estate granted by a debtor to his creditor with a condition that if grantor (mortgager) pays the debt on or certain day of the month, year - or that grantee shall recover - or that the grant shall become void. 281 157 - Pa. 114 - Litt. 332
Co. 205-

Recovery is not necessary to vest the mort^{or} right but more safe - hence his right would rest on fact evidence - called a dead pledge because if Mort^{or} fails to pay the debt, the estate as to him is forever gone at law without a possibility of recovery. 281 158 Pa. 4, 13-168, 172, 156 and Co. 428, 50

A mortgage

then is an estate pledged by a debtor to his creditor as security of the debt - In its original sense it denotes the estate pledged - now sometimes used as synonymous with mortgage deed -

Grantor called Mortgager

Grantee - - - Mortgagee -

The condition is called the defeasance (because its office is to defeat the estate) & may be either incorporated with or annexed to the grant or be under a distinct instrument - for two instruments executed at the same time & relating to the same subject matter make but one contract - This rule supposes one of the instruments to refer to the other. Pa. 5-
Pa. 5-

But if grantee gives back a bond or covenant to answer

Mortgage

the land to grantor on payment of a certain sum (the land is not referring to the deed) it does not make a mortgage - *Bank v. Gild* - S.C. 1809

As soon as the estate is created mortg may take possession the land to be disposed of on performance of the condition by payment at the day - for the legal title vests in him immediately the defeasible [241 158 - Pow. 14-16-79] the the usual practice is for mortg to remain in possession till day of payment 341 158 -

Distinction

at C.L. between a grant made to secure a gift or gratuity & one made to secure an antecedent debt. In the latter case - tender of the money at the day discharges the mortg & gives only & reverts the mortg title - In the former it discharges not only the lien but the personal debt - that is - the whole obligation - for as tender discharges the estate mortg can have no claim except on the ground of debt or personal duty - but here there is none - Pow. 654-b-454 - Col 207, 9. Litt. 315-8 980-77 - L. 2-245 -

The condition of a mortgage deed was formerly considered as precedent because its effect is to reinstate mortg in his inheritance - not so now - Pow. 7. Col 205-18-21-160-22 - Cro 6-112.

Formerly if mortgage in fee was forfeited the estate being absolute at law the wife of the mortg was entitled to dower in the estate & it was subject to all his real charges - to remedy that inconvenience it became usual to grant a long term by way of mortgage

- This practice is generally pursued now in Eng. - Par. 7. 281.
158- Co L 221- Cro C. 191- 1 Eq ca- 811- 33a 632

In Ct. it is usual

to mortgage in fee the wife of mort^{or} has now no interest till
after foreclosure - - If a bond given by mort^{or} conditioned
for the performance of the covenants &c - in the mortgage deed
- non payment at the day is a breach of the condition. Par 10 52
2 Dec- 110 3 Feb. 387. (Cus 2 281- 4 Feb. 286 cm.) Not left to his
election.

How considered in Equity

in Ct. if the condition was not strictly performed the land
vests absolutely in the mort^{or} / Par 13- / so that an estate
of great value might be lost for a trifling consideration
- The consequence of this hardship on mort^{or} was a contest
between courts of Law & Equity - the former construed the
condition strictly - the latter considered the transaction
as a mere personal contract to pay the loan or debt - & the
mortgage as a security for the performance of this
personal contract / Par 14- 169- / Hence in Equity
the mort^{or} was considered as the actual owner of the land
- freedom of payment notwithstanding - Chancery,
finally, prevailed - since which the jurisdiction of
mortgages has been exercised almost exclusively in Equity
- where the debt is entered the principal & the land
pledged merely as the incident - so that whenever the
debt is paid the interest of mort^{or} determines & he becomes
into his legal estate a trustee for mort^{or} - Par 14- 15-
18a- 575-

When forfeiture of a mortgage of personal property
occurs it rests absolutely in mortgagee & lender 290
& Mend 135. Pow 3. - qu - is there no redemption in equity?

When there is an absolute sale with an agreement
for a re-purchase the time limited for such re-purchase
must be precisely observed or the vendor loses all right
to redeem the property 11 Pet 387. 1 Ke 405 1 Poth.
on Sale 183.

Q. 1056. A conveyance of real estate intended merely as
security for a debt the mortgage on its face is a
mortgage. 7 Johns. 66. 42. 1 Newl 437. 2 Cross. 324. 154. 11
555-205. 2 Johns. Ch 189. 4 do 167. 6 do 417. 1 do 594.
If absolute it is valid at law as against prior creditors
862 189-117

If a mortgage is executed with a fraudulent intent it will not
be regarded in equity as a valid security for any purpose
106657

Mortgage

148

created by the conveyance of real estate & not intended as a
disposition of the estate is considered in Equity as a mortgage
| Paw. 18. 2 Ch. 495 | & all private agreements made at the
time to prevent a redemption unless the money is paid
according to the contract are void - Its original nature
cannot be thus altered - If improved mort^g might take
the advantage of Mort^{or}'s necessities - Once a mortgage
always a mortgage - | Paw. 19. 21 - 28. 38 - Nev 33. 190 -
2 Ch. 147 - 2 Vent 364 - Nev 192 | Ex - An agreement
that if mort^{or} does not redeem within a given time
he shall not claim his equity of redemption - or that
the conveyance shall be deemed a sale - is void - & it
makes no difference as to this point whether the power for
redemption is in the same deed or in a distinct instrument
Paw. 29 - 2 Nev 84. 602 603 - 7 John 410 -

Nor will an agreement at
the time to make the conveyance absolute on failure of
payment of mort^g will become an additional sale
after the case - Paw 29-4-6 Nev 488-188 - 2 Nev 520

But an
agreement that in case of the sale of the equity of the
Mort^{or}, shall have the right of redemption would be good
Semb - Paw 267. 2 Eq. Ch. 599 -

So a subsequent agreement for an
absolute sale executed by the parties is void - So if a subsequent
release of the equity of redemption with an agreement
by mort^{or} to reconvey on certain conditions - Here mort^{or}
is not bound to reconvey unless mort^{or} strictly performs the

Mortgage.

conditions. Paw 28-119. Ver 268 Fall 61 1 Ver 418 2 Ly Ca
595- 1 Bro. C 149-

In some cases of family settlements where
the transaction is between members of the same family
& where a benefit or kindness is intended in a certain event
to mort^g an exception is admitted to the maxim *onus est
propter* - Ex - A makes a mort^g to his wife upon valuable
consideration by way of family provision "redeemable during
his life only". This is not redeemable after his death - Paw 313
28 Cent 364 - 1 Ver. 214-82- 193- 2 Ly Ca-595-

Absolute debt con-
sidered as a mort when an agreement to redeem is
infracted from circumstantial facts (Paw 65. Fall-
60- Pr 526 3 Wad^m 429. 2 Atty 71) which are notorious
& in proving which there is no danger of perjury - See
que No such judicial decision - 2.

Parol evidence is admissible
to prove payment of the debt due to mort^g - if done his
interest in the land merges & defeated by parol testimony - See
Pr notice attending - for when the debt is discharged his
interest ceases - & if he has forgiven the debt parol evidence
of his declaration & acts is admitted to prove the fact - Ex - 2 -
freely forgive you the debt^g &c - For the fact to be proved
is not a contract &c - for the conveyance of an interest in
land, & so not within Stat. &c - & as a parol agreement
between co-mort^g that the whole charge should eventually rest on
one of them is within the Stat. &c - Paw 58. 6.

Mortgagor's interest in the premises mortgaged.

If land is devised to trustees to raise money out of the rents & profits for payment of debts & portions & in case enforcing them to mortgaged money sufficient cannot be then raised they may mortgage or even sell. Since if sufficient were levied - or if debts be ordered to be paid out of the rents & only *Pow - 184-5. P. 111*
1894 - 2 Ver 310

Interest of Mortgagor in the premises Mortgaged

As soon as the estate is created the mortgagor may enter - Legal
title is in him tho' discharge *Pow - 66. 79 - 2 94 158*

Since if there is an agreement that mortgagor shall remain in possession for such a time - then he is tenant for years - but an agreement that he shall continue in possession for no fixed period leaves him a quasi tenant at will. *Pow 66. 79* Cro 2 654-60 - if left in possession without any express agreement he is so far as respects the right of possession (before the day of payment) considered in law as a tenant at will tho' in some respects he differs from such a tenant. *Pow 66. 75 - 34*
81 - Cro 2 657. Doug 21 270. 5 East 449 } Hence he may
enter in agreement without notice to quit. *Pow - 68 - Cro 2 660*
Cro 2 - 305 - Doug 22 106th 606 - *Watson 2. 1st Ed 111*
Common tenant at will being now treated as tenant from year to year must have notice -

But mortgagor in possession is not liable for rent as the tenant at will is for he pays interest - tho' he is not entitled to emblements for he is liable for the debt & they apply in

Mortgagors interest

discharge of it. Doug 22 - Pann 70. 67.

A common tenant at will cannot lease or underlet - such act is void & creates detinue in his estate - But mort^{or} in possession may make a lease which will be valid unless mort^{or} elects to disaffirm it - It does not of itself determine the estate - mort^{or} may treat the lease as a tenancy at will or not - for the lease stands in the same situation with his lease 1 Root 77. Doug 22 - Pann 68. 69. 606 - Cr. C. 503. Pann 80 -

Lease is also made in ejectment without notice & is not entitled to accretions. Lamb. Pann 74, see Doug 22. 3 East 449

Mort^{or} may treat such lease as his tenant & by giving notice may compel him to pay all to him all the rent due (that is - all due before as well as after notice) but not to pay what he has expended to mort^{or} Pann 68. Little 600

Mort^{or} who is in ejectment by mort^{or} cannot ouster a title in a third person to defeat mort^{or} - estoppel 1 127. 700 - 8-480 - Pann. 469. 231. 295 - So if mort^{or} lease is void in ejectment by mort^{or} 1 127. 700 Pann 70. 112. 258

Such lease is still good against mort^{or} & all strangers - for mort^{or} is estopped to deny lease's interest - so against strangers a lease, if proper is sufficient - therefore he may sue a stranger in trespass - & may redeem of mort^{or} Pann. 75 - 1 Ch 59 - Cr. C. 204

The mort^{or} is deemed in equity & for many purposes at law the real owner of the land mortgaged Doug 610 Pann 998

2 Lohm 75
 4 do 215
 16 do 289
 18 do 487
 6 Lohm 147
 8 Mord 576

Where mortgage obtains the removal of a loan or any other
 advantage in consequence of his situation as mortgagee
 the mortgagee coming to possession is entitled to the benefit
 thereof 1 Price 48

In W. R. v. Lohm of an equity, against his Lapse debt may show
 that P's interest has expired. Now can the Lapse be shown
 by the expiration of Lapse 29. C. L. 379 1 Lohm 383 n 2
 So in Champion for rent debt may show that P's had
 mortgaged the premises & that mortgagee had given
 him notice not to pay, rent to P's 29 C. L. 410 427

74. 1000
 75. 1000
 76. 1000
 77. 1000
 78. 1000
 79. 1000
 80. 1000

The first of these is the fact that the
 number of the series is 1000. This is
 the first of the series. The second is the
 fact that the number of the series is 1000.

The second of these is the fact that the
 number of the series is 1000. This is
 the second of the series. The third is the
 fact that the number of the series is 1000.

Mortgagee's interest

1039

The mortg^{ee}'s right is considered as merely a chattel interest - a security or pledge for the debt - Hence if a freehold is mortgaged the reversion remains in the mortg^{or} - he gains a settlement by his mortgage & his interest descends to his heir & will pass in admeise under the description of "Causel" or "reversionary estate" - It may be conveyed like other real property Deeds 610 Deeds 109, 13, 39 - 1 Ves 304 Deeds 978 - Deeds 15-76 - 92, 124 - Deeds 694 2 Ves 61, 16th. 605 - 2-294, 2 B & W 341

But if mortg^{or} in prop^{ty} commits waste Chancery will give an injunction in favor of mortg^{ee} & this even when the mortg^{or} is of estate for years only & after 723 - Deeds 75 and Wade.

Mortgagee's interest

This interest is to be considered at four periods - 1. Between the ex^{ec} of the deed & the forfeiture - 2. After forfeiture & before he takes possession - 3. After he takes possession on the eviction of mortg^{or} - 4. After foreclosure.

1. Before forfeiture. Mortg^{ee}'s interest continues as it was at E. L. before the interference of Chancery - The legal title is in him to the whole interest pledged - the defeasible as above stated - may take immediate prop^{ty} for before forfeiture. Equity has no cognizance of the transaction - Deeds 79- 156- 223- 2 Ves 156. ante

Pr 614 423 post-

Mortgagee's interest

Does any conveyance made of the same lands by M^r during this period are said to be void against mortgagee? Paw 80 - 2u-void or voidable? The meaning is that he may defeat the purchase of the prop^y by treating himself as a wrongdoer - Ante - 1038

Does also mortgagee on notice compel mort^{or} to pay him the rent even before perfection & the rule holds tho the lease is prior to the mort^g - Paw 80. Darg 286

Non mort^g,

has the legal title to the reversion & rent is incident to the reversion - that is - rent due before notice as well as afterwards not that which has been paid to mort^{or} / Paw 84 - But he cannot in the last case & trust recover rent due before the mort^g was made -

When a term for years is mort^g by lease mort^g is in nature of an assignee of the term if the whole is mort^g - (but in this case the mort^g is not liable on the covenants unless he takes actual possession) / Paw - 85-8-92 - 24u 275 - Darg 288.44 - Now holden contract - 14u 285 - 32u Ch 166 - see 3 Ver - 112 - 3 Ctt 572 - Allot 21.2 /

- It is a mere security not intended like a common assignment as a disposition - & this rule holds tho the mortgage is perfected - But if mort^g is such as does take the prop^y he is liable in all the covenants which run with the land like other assignees - for he enjoys the profits - Paw 92 - 12u Ch 105 -

283 - Mort^g has after perfection even tho he reversion in reversion & takes prop^y only a small interest

according to the law of equity - only a security Paw - 92 -
118-70 Dang 610-94 - 16th 605 - Ante

This interest will
regularly not pass in a deed under the word "Lands"
tenements & hereditaments / Paw - 167-70 - 24th 621
P 82 - Vent 851 see Cro. E 447-80 / seems if a claim
has no other property answering that description
Paw 170 post

He is considered then as having only a chattel
interest till after foreclosure / Paw 22-170 - / & on his death it
goes to his ex^r not to his heir / 18th 367 - / Hence the assign-
ment of the debt (as the bond) carries his interest tho he
does not assign the mortgage deed. so devised in Gt - also
Paw - 358 - 453 - 1 Root 248 - 13th 158 - / for the debt is the
principal the security the interest - Hence also he can
not before foreclosure do any act of ownership which will
injure or diminish the mortg^{ee}'s right - Ex mort^g binds
a bill to redeem on payment - Assume that mort^g has leased
the land & that the term has not expired - Defeasance in-
sufficient - Paw 93 - 12th 610

Seems mort^g might always present a redemption
before foreclosure -

The D. L. has said however in the
last case that mort^g might lease for years before fore-
closure so as to bind mort^g to avoid an apparent Gt. &
from necessity Paw - 98 -

So regularly in Equity mort^g even
in fee can not before foreclosure justify a title liable

Mortgagee's interest

to an injunction - does not to action at law. *Bar* 94
 24 *Ver* 392 - 172 - 3 *Attk* 725

But if the security is defective
 mortg^{ee} in fee will not be restrained from committing waste
 before foreclosure. *Bar* 95. (But the tender & when
 it must be applied to the debt & then go to the mortg^{or}'s
 benefit - & in all cases in which the mortg^{ee} actually
 commits waste he is accountable to the mortg^{or} for the
 value of what he has taken from the freehold - that is
 it is applied towards the discharge of the debt - first of
 the interest & then to the principal. *Bar* 95 -
 2 *Attk* 723 -

Mortg^{ee} is allowed such expenses as he incurs
 for necessary repairs & other acts for the preservation of the
 estate & may add them to the principal & carry interest.
Bar 95 - 2 *Attk* 513 - 1 *Wils* 34 - 24 *Ver* 84 -

If a mortg^{or} be
 made of an estate to which mortg^{or} has no title & after-
 wards the true owner conveys to mortg^{or} or his representative
 then the mortg^{ee} in equity will have the benefit of the last
 conveyance "a gift in the eye of the law" *Bar* 97 - 24 *Ver* 11
 see 172 960

If mortg^{or} of a term for years alien one of the ex/lie-
 nation of the etc - this will be a trust for mortg^{or} & remainder
Bar 97 - 3 *Attk* 515 -

Mortg^{ee} in possession is not bound to expen-
 money - except for necessary repairs. *Bar* 98 2 *Attk* 518
 - But if he has expended any in defence of mortg^{or}'s title

If any part of the debt is paid the loss created by the
mortgage is so far diminished - & it cannot be restored by
any subsequent agreement of the parties 1 Paige 182
5 Cowen 671 -

Mortgages of ships also have taken place - & caused it to be
registered in his own name with no good, he had a few
supplies furnished by Spain, made the creditor did not know
of his relation to it at the time & it was embarked
4 Hill 177 18 Johns 169 15 Moos 477 3 Kent 133-6 Atwell
17.19

Mortgages, interest in personal property, mortgages
may after forfeiture be sold on as if the property
remained in mortgage, Book 9 Page 258

Two pieces of land were mortgaged by one deed &
the same piece with another by another deed and
ex^{ts} creditors lived in the equity in the two pieces
which were separately appraised & then the proportion
of m^{or} interest in the whole as the amount of the
eq^y in the whole bore to the amount of the appraised
values of the lands & the amount of the incumbrances
sett off & held right then establishing the principle that
the interest in one piece alone would not be to how
13th & 14th

Equity of Redemption

1043

he may add it to the debt & it secures interest & part
the more to the estate subject to the same incidents
to which it is subject in the hands of mortg^{or} - therefore a
forfeiture of the estate by mortg^{or} destroys mortg^{or}'s lien
Ex - Tenant for life mortgages in fee - this interest is a
forfeiture 2 B.W. 126 - Paws 99, 100 & Ebs 59 - (108 Con)

So of a
forfeiture after award in favor of the remainder man or
reversioner by mortg^{or} in possession - Ex waste - Secured in
case of forfeiture to the crown for treason &c Paws 111
for the king takes only what interest the offender has -

Equity of Redemption

The equitable interest remaining in the mortg^{or} after forfeiture
is called the equity of redemption - Paws 14-15-156 -

This interest
is called a trust for the legal title is in the mortg^{ee} who is
considered as trustee for mortg^{or} of the legal estate till after
foreclosure - Paws 15-114-821-2 & the 526-90606 -

A mortg^{or}
may at any reasonable time redeem by paying the debt &
interest - so may any person having any interest under
lien in the land - Ex A makes a voluntary deed to B
& afterwards mortgages to C - tho the deed is fraudulent
against C - it is good against A - therefore B may redeem
of C - Paws 108 - 1 Ken - 193 - 1 Ebs 815 -

Equity of Redemption

So if mort^g become a bankrupt his assignee may redeem
 Paw 108. 1 Ch Ca 71 / So mort^g tenant / Paw 108. 69 - Darg 22 /
 So the assignee of a mort^g or after mort^g ceases his
 him may redeem for the equity is his by descent
 Paw 109 - Ver 28 - 170 -

And an Equity of redemption is
 governed by the same rules of descent as if it were a
 legal estate - Ex at C L - it descends if a fee to the eldest son
 & by law of Et to all the children equally - Paw 109 -
 2 Ver - 204

So a devisee may redeem - or a judge master or
 of mort^g may redeem for the just - & also upon the state
 Paw 109. 1 Ch R, 170 - 2 Burr 9. 8 - Paw 111 - 2 Ch 300 - 200
 18 Em 399 - 2 Ca - 363 - Col 102 - 381 - 220

It Et no such
 him - but mort^g creditors having levied upon the land
 may redeem - Here it is the practice to levy ex^{ty} on the
 equity of redemption & appraise & set it off to mort^g
 creditors - that is considered as vesting the mort^g right
 absolutely in the creditors - There have been some
 decisions of the Sup^r C in Et that the ex^{ty} creditor
 obtains only a lien or incumbrance - but the decisions
 are now overruled - & it is settled that when all the right
 of the mort^g is appraised to the creditor on the ex^{ty} the
 interest of the former is extinguished - Day 98 -

So in Eng^d
 the crown may redeem where mort^g has forfeited his estate
 by treason (or larceny) felony Paw 111 - 13 Br R - 22 -

Equity of Redemption

1048

If a mortgagor's estate descend to an infant his guardian may, without any direction from a court of Equity apply the profits to discharge the debt. *Bar 111.2 8th Ch. 127.*

The widow of a mort^{or} if she has a jointure in the lands may redeem the whole tho her jointure is of only a part - This rule relates to a jointure made after marriage - for if made before it, & ded^d the mortgage - So tho it is settled in her ex^{or} marriage *11 Ch. 191. 3. - 38 - Bar 112 - 14th Ch. 219*

Now in this case if she pays more than a third of the debt she & her representatives shall hold against the heir till reimbursed - that is - where she joins in encumbering it - for otherwise she is not bound to pay any part of the debt. *Bar 318-17, 1 Ch. 271 - 11 Ch. 191*

The heir bound of a mort^{or} may redeem or tender by the next day. *Bar 112. 15, 1 Ch. 60*

But mort^{or}'s wife is not entitled to demand of the equity of redemption of mort^{or} in fee. *Bar. 321. Ante post*

But in order to entitle the husband to tender in the equity of redemption or in any other trust estate there must be a seisin of the freehold during coverture - that is - an equitable seisin which is equivalent in Equity to an actual seisin of the legal estate at law - Actual prop^{or} with receipt of profits tho mort^{or}'s prop^{or} is only that of a tenant at will at law. *Bar 114 - 6*

But husband is not entitled where there is no actual seisin in equitable

Equity of Redemption

reisin. Ex. One receives a purchase of inheritance to trustee to the sole & separate use of a married woman - trustee keep $\frac{1}{3}$ - husband may sue to set aside it - the as to this is a fence rule - here husband cannot be said to be seized even in Equity - 18 Es 298. 207. (See post in this case the trust have not been for the separate use of the wife - would the reisin of the trustee have entitled the husband to curtesy?)

A subsequent incumbrance may redeem if a prior one - Ex. A mortgages to B. & then to C. C may redeem of B. for he has an interest in the land under A. & so in Ex - may a judge & creditor of mort^{or} for his judgment is a lien upon the land as against Mort^{or}.
Paw 107 14th & Ch. Ca. - 170. 7 & in 52 - 2 Ven. 663

If a mort^{or}

- a judge & creditor or a lessee to mort^{or} redeem. mort^{or} has his - devisee or assignee may redeem of him - for he has not the whole interest - but a mort^{or} & he has the whole redemption equity - So mort^{or} may redeem & release a release of his equity of redemption & the release appear, from circumstances to have been made upon a secret trust for his benefit - Ex. where it appeared that the debt due was very small compared with the value of the estate. Paw. 119 - 1 Ch. Ca. 107 -

If there be tenant for life with remainder or reversion in fee of an equity of redemption. they are to pay proportionally or redeeming Paw 120 - that is - tenant for life one third - & if he is obliged to pay the whole

When the mortgagee purchases the equity of redemption
of the mortgage the debt in law is extinguished 3 Ct R
353. nisi 3 Ct R 213

But if mortgagee of an ind^o estate purchases the equity at
a sale made in pursuance of an order of Probate he is not
precluded from retaining his mortgage 3 Ct R 354 -

The union of the equity of redemption with the legal estate produces
a merger of the mortgage unless it is declared to be kept on
foot for some beneficial purpose 6 John Ch 396 18 Ves 384

Equity will not permit in such case the mortgage to be kept on
foot to the injury of a subseq^t bona fide purchaser under the party
who has thus consolidated the title 3 John Ch 53. 6 de 395 -

Equity will consider such encumbrance extinguished or keep it
alive as will best serve the purposes of justice & the critical
of just intentions of the party 6 John Ch 395 2 Ves fr 261 -
6 John Ch 426 5 de 214

Qu. whether the purchase of the equity of Redemption to a part
of the mortgage premises by a mortgagee will not extinguish
the mortgage as to the whole? 6 John, Ch 426 Litt fr 222 -

Equity of Redemption

1047/2

he may hold over till there is remainder contribute - Ex D'Arville
of equity to a for life remainder 2/3 Pass. 120. 1 Rep. Ch. 221
2d Ch. 82 - (said 1st Ch. 44 - that tenant for life shall bear 2/3 of
the debt.)

If the mortgage money is payable on a contingency
not arrived he in remainder may exhibit his bill
quia timet accipere the tenant for life & compel him
to contribute - that is - to keep down the interest or to
assign & prepare Pass 121. 442-4. post

If tenant for life
pay, the whole debt on redemption & besides a recon-
veyance & makes improvement & dies - the remainderman
as on his redeeming of his representatives must pay for
2/3 of the lasting improvements but ~~no~~ interest is allowed
for the money he so paid - for he is bound to pay the interest
surviving during his estate - as he would be if he were in
prop^{ty} & the debt not paid. Pass 121. 442 2 Eq. Cas 596-11

And the
remainderman can in Chancery compel him to keep down
the interest - Pass 121. 442 - Gilb. 2. 69

But according to other opinions
as to the proportion to be of the mortgage debt to be borne by tenant
for life & remainderman - note this distinction - If after
redemption by tenant for life the remainderman applies
to recover of him during his life - tenant for life bears 1/3 -
If application is made after tenant's death - here
the representatives allow towards the debt only so much as
his enjoyment of the estate was worth - tho' it were test one

Equity of Redemption

see, Rem 121 - 144 404

An equity of redemption of a mortgage in fee is not open at law - Therefore to obtain at law by land creditors against mortg^{or} - he may plead scire fac devent - but in Equity it is open and Chancery will order a sale of it for the purpose of paying debts. (Rem 132 & 133 294 -) & if the heir releases or assigns it he is liable in Chancery for the money received - or the value to the Ex^r or creditors Rem 124 - 244 61 - & 133 294 384 394

being equitable open to all the creditors one paid out of it pro rata or paid pro se without regard to the rank or quality of their debts - In equity there is no such priority as at C. L. 231 511 -

In all equities of redemption are like other real open - They are open at law - if mort^{or} releases they may be sold like other real property for payment of debts - & in Eng^l the mort^{or} reversion of permanent on the determination of mortgage for years is legal open - & the creditors may have judgment against the heir with a scire fac devent till the reversion comes into possession.

Ex^r & tenant in fee mortgage for 100 years - or a tenant for 100 - mortgage for 80 years - In this last case however the open are personal & in the hands of the Ex^r the action therefore must be against him. Rem 125 - 144 - 410 133 354 -

But in these cases judgment of open, quando acciderint - Creditors of course cannot by bill compel the heir to sell the reversion - they must wait

15 Years ^{prop} will bar an Eq. Redemption May 12 49 9th 1855.

Over the term "beyond seas" in the Statute of Limitations out of the State & 11 Wheat. 361

If one tenant in common is compelled to pay the whole mortgage & takes to himself a transfer of the legal title the share of the mortgage which it belonged to him to pay is extinguished & his title to his portion of the property is perfect & as to the residue of the mortgage he becomes subrogated to the right of the joint mortgagee & may foreclose his co-tenants share unless he pay his portion of the debt 17th 66
397.8

6 lots were mortgaged - mortgagor afterwards released 4 of
 the 6 lots from the mortgage leaving the original debt
 to stand ready charged on the remaining two lots
Held that the two lots were charged with their
proportable proportions only of the original debt and
 interest according to the relative value of the
 6 lots at the date of the mortgage 1st L.C. 125-

Equity of Redemption

1049

till it falls. Pau - 126 - 2 Rev. 61-

An Equity of redemption is clearable for payment of debts (Carr. 126 - Heald 469 - Bar 41) & the debts in this case are to be paid from the estate devised being but an equity & so equitable assets. Pau 126 - 28 W. 412 2 letter 50-

Formerly this distinction was taken - if lands mortgaged were devised to one for the payment of debts generally. The assets were legal - but if the devise was made & the assets were legal - he being supposed to take as Eq^y. Carr. 126.8 - 1 W. 68 - 111 - 69. - Was settled otherwise the Eq^y is but a naked trustee in this case & the equity of redemption thus devised to him is equitable assets. Co L 112 - 181

Held by Wright & Raper that if lands are devised for the payment of debts (simple contract) & legacies - the debts should have no preference - because the will of the testator alone makes the bond liable & the devise of assets no preference. Pau 130 - 2 Term 220 - 2 Ex Ca - 371 - 220 & sic cum writ a / 2 Ex Ca - 248 - 11 W. 11 - 1 Ex Ca 275 / - that, a man ought to be just before he is haunted

The regularly debts have no priority where the fund is equitable only yet a second mortgage shall have his debt out of the Equity of redemption in preference to other creditors tho his interest is but an equity the legal estate being in the first mortgage - for his right is a lien which Chancery will not take away. Pau 130 - 2 Rev 101

Equality of Redemption

No instance in Eng^d in which an equity of redemption has been held liable to the eq^y of a bona creditor in the life time of the mort^g. & after his death it is equitable op^s - ante

Bar 132 - 2 Ld. 292 -

In general no person is allowed in Equity to redeem unless he is entitled to the legal estate or Bar. calls it that is - unless he has a vested title to the equity of redemption - Bar 134 - In a claiming under a deed by Mort^g his grantor being a life tenant - mort^g shows a deed of entail entitling another person or persons him - A. is not permitted to redeem at his peril unless he shows that the entail is destroyed. Bar 133 - 2 E. 605 - 1 Ves. 182 -

But if

he in whom the title to the equity of redemption is refuses to redeem any other person interested may elect - En. Mort^g being a bankrupt - a majority of the creditors presented the assignees redeeming & here the other creditors were allowed to redeem - So in general, in common cases if mort^g him will redeem the creditors cannot - Unless if the him will not. Bar. 133 - 2 Bernard^g 20 -

The right of redemption

being a creature of Equity - a court of Equity will always make Subservient to its own rules - that is to the ends of justice - & he who seeks equity must always do equity. Some claiming under him either absolutely or under certain conditions as the justice of the case may require - Bar. 135 - 2 Vent 550 - 1 Rep. 617 - Lord 601

Equity of Redemption

1051

Eq. mort^y applies to redeem on payment - if he cannot set aside the prior charge at law Chancery will not include a lien in this alternative - If he wants his equity he must do so early - he must either proceed or abandon his bill before he attempts enforcement of the mortgage at law - So also if mort^y having previously attempted to redeem mort^y is allowed against him all the cost & expenses in the suit at law. Par 137. 4/3. 284 526 -

The mort^y

cannot compel the mort^y to redeem before the day of payment but in case of a hard bargain on mort^y he will in equity be permitted to redeem before that time - Ex. Where by the increased value of the land the rents & profits will satisfy the debt long before the day of payment - Par 137. 182 282 183 - 294 -

If prop^y be obtained against mort^y by fraud lending a riot it must be restored before there can be any redemption - Par 139. 284 8a - 577 -

Where mortgagor has one to secure one loan & afterwards he came to secure another loan one of which securities is insufficient & the other more than sufficient - He is not allowed in equity to remove the one without the other - So also if he has applied to redeem - Par 139 - 284 207 286

If one makes two mortgages to one person & dies & his heirs claiming by descent endeavour to defeat one & afterwards applies to redeem - he shall redeem both or neither / Par 139 - 284 207

Equity of Redemption

Her 245 - 1st Ly Ea - 325 - Is if there are several incumbrances & the heir of Mort^y purchases the first or charge - the first incumbrance shall not stand in the way of a subsequent one for any more than the heir gave - that is - they may redeem of him for what he gave (See 141 - 28. & 558 - P. 49. 476 - 1st Ly Ea - 570 - Lat 155 - May not the heir then redeem of the subsequent incumbrances for the same price together with his debt?

Case, Rule, &c.

the heir $\frac{L^r}{H}$ trustee or agent of mort^g purchases in mort^g
gages or deeds as in the last case at a dissent mort^g $\frac{L^r}{H}$ inditors
dever Regates shall have the advantage of the circumst-
- subject to the same equity, as mort^g when he represents
Bar. 142 - 184 - 185 - 49. Vol. 155 - 2 Cth. 541

Sent by a stranger

or in my ^{own} ^{name} he or trustee purchases in incumberance to protect others which he himself holds - he shall be allowed the whole money due tho he brought for less. Dec 143 -
Nov 49

The equity being equal the legal title prevails
- not a man volunteers - purchases for his own security
- Did you - does this carry the case in principle from the
above case of a volunteer purchaser?

if mortg is included
to mort^g, otherwise then upon the mortgage, he will not
be permitted to redeem on a bill for redemption
unless he pays both debts - must do equity. - Paws 148 -
342 - 18 W. 41 - 240 - Sal. 10, 2 Eq. 613 - (See similar)

1840

Received of the Hon. Secy of the Navy
the sum of \$1000.00 for the purchase of
the ship "Albatross" for the service of the
U. S. Navy.

Witness my hand and seal this 1st day of
January 1840.

John C. Calhoun
Secretary of the Navy

Approved by the President of the United States
this 1st day of January 1840.

James K. Polk
President of the United States

1840

A Release of the equity of redemption to mortgagor
as well as a foreclosure is a satisfaction of the debt
if the proceeds are equal in value to the debt. See next
4 Havel 381 2 Gwilli, 152. 5 Linn 380 4 do 403 post 1092

and mort^g life to her alone | Paw 511-15- 2 E Ca 603 /
(2 Day - 397 Con) This rule has lately been denied
except when mort^g has applied to redeem 3 Bro Ch 162 -
2 Ves Jr 376 - P 513

So if mort^g has would redeem he
must pay all debts due from mort^g to mort^g by bond
as well as that secured by mort^g - for the heir after
redemption will be in by descent & the equity is
open for paying bond debts - Circumstances - Besides
he must do equity as his ancestor must have done
Paw - 143 - 1 Ves 245 - 2 Ch Cas 164 - PR 75 - 1 Ves
57 - 1 Ch Ca 97. & 6th C 88 -

So if a lease for years is mort^g
& then a new debt contracted by mort^g on land the
Eq^y if he would redeem must pay both - Equity of
redemption open in his hands | Paw - 144 - 2 Ves - 17 -
3 Ch - 572 - 3 Dec - 240 - | So I suppose if the new debt
was not by bond - But if there are several incum-
brances & the first claims a bond debt above it will be
sufficient to call in all incumbrances whether by mort^g
judgt or statute the bond being no lien - person at charge
only - bond creditor has not the same equity against
an incumbrance as against the heir | Paw 145 - 1. 2 Ch 578 -
52 - 3 Dec - 240 - 1 Ves - 87 - | 2 since the Stat against
fraudulent devises the dec^y of the equity of redemption
cannot redeem without paying the bond (ut supra) | Paw
145 | He is a mere volunteer & stands in relation to the
bond creditor as the heir would 3 Ch 511, 1 E Ca 325 - (554 88/8 M)

Equity of Redemption

If the assignee of a mort^g has a bond debt he has the same equity against mort^g & his heirs as a lender would have. *Bar* 148- 2648- 361-

If the money due on bond were lent first & then a mortgage made mort^g would have the same advantage as to both debts. *Bar* 146 1808- 247-

Where the mort^g or his representatives is off- in Equity on a bill to redeem that court will carry the debt beyond the penalty of the principal & interest & exceed it - He must do Equity or Chancery will not interfere but will refuse its interposition on any other terms than it does not indeed alter the contract. *Bar* 146- 2 Eq Ca- 611- 3 Atk 518 see 331 432- Lect 137 / Lender of Money is off- *Bar* 146 313/- 432- Lect 137-

If money or assignee to whom money is due on bond maintains peace on a third person by concealing it he may be redeemed on payment of the mortgage money only - *Eq* - Mort^g son & heir to mort^g his intended wife's father with a view of making arrangements for a settlement applies to mort^g to know what is due on the bond - the latter denies that there is any bond & see settlement is made. *Bar* - 147. 33 Eq 131- part

If part of the mortgage money is paid & then a further sum borrowed mort^g on redemption must pay the last as well as the first. *Bar* 147. 342- 1808- 411

But a purchaser of the equity for a value

Equity of Redemption

1058

able in redemption may redeem without paying the bond in such cases for having a direct interest in the land his claim that is higher than one growing out of the personal charge. *Paw 148* *Or. Lk. 84, 511* *Sta- 1107* *1868* *1871* *1872* *1873* *1874* *1875* *1876* *1877* *1878* *1879* *1880* *1881* *1882* *1883* *1884* *1885* *1886* *1887* *1888* *1889* *1890* *1891* *1892* *1893* *1894* *1895* *1896* *1897* *1898* *1899* *1900* *1901* *1902* *1903* *1904* *1905* *1906* *1907* *1908* *1909* *1910* *1911* *1912* *1913* *1914* *1915* *1916* *1917* *1918* *1919* *1920* *1921* *1922* *1923* *1924* *1925* *1926* *1927* *1928* *1929* *1930* *1931* *1932* *1933* *1934* *1935* *1936* *1937* *1938* *1939* *1940* *1941* *1942* *1943* *1944* *1945* *1946* *1947* *1948* *1949* *1950* *1951* *1952* *1953* *1954* *1955* *1956* *1957* *1958* *1959* *1960* *1961* *1962* *1963* *1964* *1965* *1966* *1967* *1968* *1969* *1970* *1971* *1972* *1973* *1974* *1975* *1976* *1977* *1978* *1979* *1980* *1981* *1982* *1983* *1984* *1985* *1986* *1987* *1988* *1989* *1990* *1991* *1992* *1993* *1994* *1995* *1996* *1997* *1998* *1999* *2000* *2001* *2002* *2003* *2004* *2005* *2006* *2007* *2008* 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*2152* *2153* *2154* *2155* *2156* *2157* *2158* *2159* *2160* *2161* *2162* *2163* *2164* *2165* *2166* *2167* *2168* *2169* *2170* *2171* *2172* *2173* *2174* *2175* *2176* *2177* *2178* *2179* *2180* *2181* *2182* *2183* *2184* *2185* *2186* *2187* *2188* *2189* *2190* *2191* *2192* *2193* *2194* *2195* *2196* *2197* *2198* *2199* *2200* *2201* *2202* *2203* *2204* *2205* *2206* *2207* *2208* *2209* *2210* *2211* *2212* *2213* *2214* *2215* *2216* *2217* *2218* *2219* *2220* *2221* *2222* *2223* *2224* *2225* *2226* *2227* *2228* *2229* *2230* *2231* *2232* *2233* *2234* *2235* *2236* *2237* *2238* *2239* *2240* *2241* *2242* *2243* *2244* *2245* *2246* *2247* *2248* *2249* *2250* *2251* *2252* *2253* *2254* *2255* *2256* *2257* *2258* *2259* *2260* *2261* *2262* *2263* *2264* *2265* *2266* *2267* *2268* *2269* *2270* *2271* *2272* *2273* *2274* *2275* *2276* *2277* *2278* *2279* *2280* *2281* *2282* *2283* *2284* *2285* *2286* *2287* *2288* *2289* *2290* *2291* *2292* *2293* *2294* 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Equity of Redemption

So the time allowed for redemption after the disability removed is said to be the same as that permitted by State limitations for making entry - 10 years in Eng - 5 in 8th Par 149. 30th 29. But if any fraud has been practiced upon mortg to prevent redemption no length of time will bar his right - Ex. W. Ed made absolute by fraud - 1. Par 151. Febl. 68 -

But if the 20 years (or 15 in 8th)

have begun to run the intervention of any legal disability in the person having the right of redemption will not prevent the bar - Ex. Perfecture assigns 2 mortg to her poss^r while the owner of the equity is under no disability - Then the State begins to run - After that the equity demands to an instant bar - Par 152 - 2 Ver 418. 12th Ec - 215 Febl - 2. Ec - 185 - 2 Lth - 233 -

But where it is agreed that mortg shall take poss^r & hold till he is satisfied - length of time is no bar - but poss^r is no evidence of mortg^r & acknowledgment Par 156 - 1 Ver 426 - 60 years poss^r held no bar - This seems to be like a vinculum - So also in case of a lender's mortgage - that is - when the money is to be paid on a given day in a certain year - or on the same day in any following year - length of mortg^r poss^r is no bar even at Law - No occasion for the assistance of Chancery - Mort^r on his hindrance, redeems, even at Law in any year - Par 156 - Febl 428 - 1 Pl - 291 - 2 Ver 701 - 2 Lth - 362 - And P. E. 369 - post -

If the mortgagor of a chattel has the right of propⁿ for a
definite period his interest may be sold as exⁿ subject to
the mortgage & Mand 339 - it is deemed that where he is
not entitled to such propⁿ that the equity cannot be thus
sold & Exⁿ l^o 361 364 4 Penn 461 2 Ave 92

A judgment of partition is a petition in favor of one tenant
in common agt a cotenant who has mortgaged his
interest & not binding on the mortgagee who is not made
a party to the suit & does not elect to appear such partition

11 P. 311

Devised lands mortgaged

10570

any act of mort^y by which he has recognized the mort^y right within 20 years (15th Ct) will pre vent the bar - Ex. Deciding the money in case the mortgage should be redeemed - having a bid the estate to foreclose - 20. Neither is there any bar if mort^y subject to be redeemed - Pau 158. 80 - 1 Bro. P. C. 309 - 8 Kin - 505 - 2 E. Ca - 596 - 2 Bro. P. C. 194. & Altho 40

Stet 418 -

Will deprives Mort^y of his equity of redemption when he is guilty of fraud in concealing prior incumbrances - & gives an absolute estate to mort^y - No such effect in Est Pau 162 - 2 Ves 589. 1 E. Ca 320

A second mortgage

of the same land is considered as a mort^y of the land itself not of the equity of redemption - if it were the mort^y could not redeem the first till he had the second -

Of a Devise of lands mortgaged

The interest of the mort^y like that mort^y is devisable & the devisee may have a decree for foreclosure - Pau 155 - 1 Ch. 232 -

Formerly

it was holden the whole of the mort^y's interest in a mortgage in fee passed under the words "all my mortgages" but that devise would have at most an estate for life only - for the mort^y's interest was then deemed a fee simple & the words are not such as ~~may~~ are required to carry a fee - It was indeed questioned whether they would carry an estate for life in - Pau 167. Cro C 447. 9. 50 -

Devise of lands mortgaged

But now the mortgage interest being cleared a chattel only the whole of it would pass under such words

Paw 177-2 Ann. 958- I Contra I will regularly not pass in a devise under the words "lands tenements & hereditaments" if the testator had other property to which the words might with propriety be applied - the words not proper to designate a chattel interest
Paw 170-2 Ver-621-P-3-2 Vent-357-2 Ch. Ca 57-

2d

If morell had no other interest in property answering the description in point of situation & circumstances - a mortgage may pass under these words - & all my lands &c in A where he had no other interest there - His intention governs - Paw 175 - Bacon and 457.

2 Eq. Ca 606

If morell devises his interest devise may have a claim for foreclosure against morell & his heirs - morell's heir need not be made a party - for he has no interest - divided every - Paw 175-485 & Ch. R 33 - 1 Eq. Ca 318.

Devise by morell of money due on a mortgage does not it is said carry the interest due at testator's death - & "£100 secured to me by mortgage" the intent seems to be to carry, or secure certain - not uncertain - Paw 176 - Bacon and 259. 2 Little 113

Suppose

the devise were of "all the money due to me & or
of such a debt secured to me"

Priority of incumbrances and of tacking

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2^d Whether mort^g interest will per^{se} induce devise
not settled according to the Stat^s - friends in Eng^d - some
Stat^s decide in E^t - some in A^m - I write - Newm^{er} properly
decided - "Lands & tenements" are the words of E^t Stat
Law - 178 - 2 Ann 978 - 1 Shaw - 68 - 89 - Coe 79. 81
25 - 3 Med 260 - Rea estate used in H. E^t 257

Priority of incumbrances & of tacking

If there are several mortgages or incumbrances on the same
estate priority takes place according to the date of the
respective securities - the first is superior to the second -
2 in this respect mortgages stand on the same footing in
Eng^d - with judgments - Stat^s & recognizances - encumbering
the lands - Law - 181 - 90 - 1 Bro. P^r C^t 20 - 2 Ves 524
1 Bro - Coe - 142 - 2 Ves 81 - 2 Ves 477 - 2 All 68 - 3 Ann 457
Qui prior est - Law 190 - 234 -

But this priority is under
some circumstances forfeited 2 a prior incumbrance
is not paid to a subsequent one - This happens 1st when
the prior has been guilty of any fraud or neglect affect-
ing the interest of the latter. Law - 183 - 2 Atk^r 49. 5 B. W. 230
1 Ves 360 - 19 H. 755 -

2^d Where the subsequent incumbrance
purchases the legal estate to protect his own - Law 194
1 Ker 187 - 2 Ves 575 - Sta^r - 240

3^d If the first mort^g is

Priority of incumbrances and of tacking

Lend a mortgagee correct his mortgage to induce another to lend him money on the same security - the latter priority - 101-88 - 2nd 701 & 49. If Mer^{ee} is present when mort^{ee} agrees to give a second mortgage to L & S makes no mention of his own - 184 370 - 184 6-182 1107

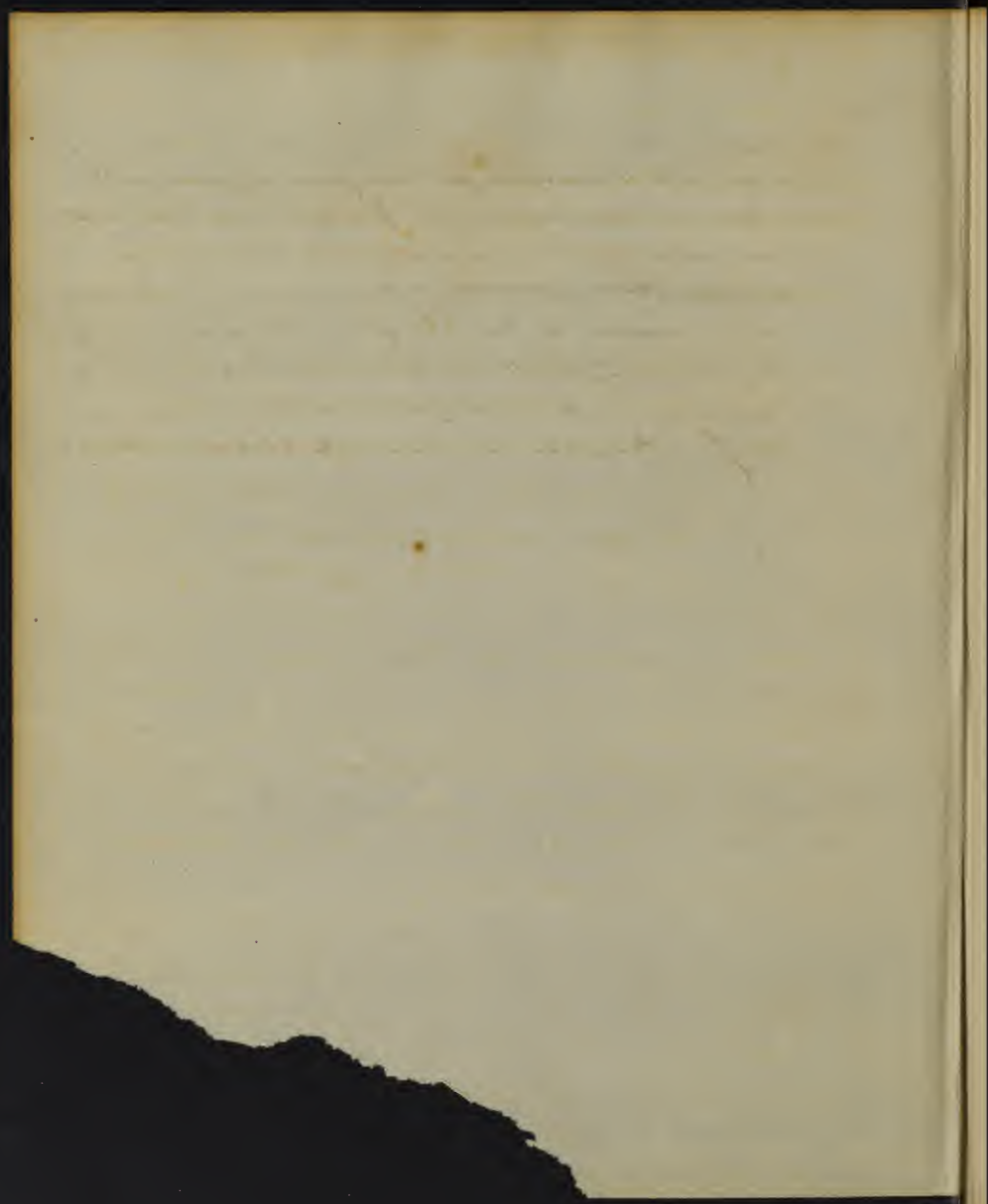
To 2^d first mort^{ee} is witness to the 2^d mortgage deed & does not inform - the second will gain priority - said that the witness should be presumed to know the contents & that therefore the first mort^{ee} in this case would lose his priority unless he proved the contrary - 2^d Medwiche 2 Thurlow Centre - 184 6-134 Ch 357 - 184 6-88 with a

To 2^d mort^{ee} is guilty of any neglect in consequence of which another is encouraged to advance money on the same security - first will be postponed - If first mort^{ee} signs the title deeds in mort^{ee's} presence who makes a second mortgage & delivers them to the second mort^{ee} - when there are one of two persons must suffer by the neglect of one - the one who has been in fault must suffer the loss - 2 1170 - 184 187 184 360 184 130-6 308 W 250 184 755 - 62 - 2 Vent 337 -

Pleading title deeds in 2^d - creates a lien on the land 184 264 - 2 East 486 - enforced in Chancery by compelling a sale -

Done who is about to lend money

To constitute a bona fide purchaser for a valuable consideration within the recording act the purchaser must before he had notice of the prior equity of the holder of an recorded mortgage have advanced a new consideration for the estate conveyed or have relinquished some liability for a preexisting debt like here - namely receiving a conveyance in payment of a preexisting debt is not suff⁴ 4 Paige 215 14 Johns 282 1 Chanc. Cas. 35, 48



Priority of incumbrances and of tacking.

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on a mortgage security, applies to a person mortgagor to know if he has a mortgage on the land & the latter denies the fact he loses his priority, provided the second mortgagor at the time of applying for information informs that he is about to lend money to mortgagor. Penn 189. 2 Ver 554

II If the whole several equitable interests affect the same estate they have priority according to the periods at which they commence - yet this rule admits of exceptions - where one of the claimants obtains the legal estate he may make of all the incumbrances which the lender allows - of course he may protect his equity with it against other incumbrances - for where the equity is equal the law must prevail - Ex - Three or more mortgagors the last becoming lent his money upon valuable consideration & without notice of the intervening incumbrances may, by purchasing the first (the legal estate) obtain a priority to the others - Penn. 190. 4. 149-228 - 1 Ch. Ca 201 2 Ver 387. (N. L. 226 1 Ver 187. 2 Ver 578 - Sta 240) This proceeding is called tacking.

Legal & equitable title in one - only equitable in the other - "Tabula in naufragio" - 1 Honb. 310 - 2 Ch. 53 - 1 M. 768 - 2 Ver. 599 Lender if he had notice at the time of lending - but notice at the time of tacking the mortgage - not maintained - a fortiori notice at the time of purchasing in the prior incumbrance does not affect the right -

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Paw-195-237. 212-21- 1 Ver-188-2 Ver-574-2 Ver-889

A subsequent incumbrance may take in this way - not only to the first mortgage but to any incumbrance or title which comes the legal estate - Ex. An antient right - a right of title &c they being prior to the first mortgage - & here he may obtain a preference to the first mortgage - Paw-198-214-2 Ver-279.

In these cases the subsequent incumbrancer takes against the intermediate ones till he has paid his own debt & the money advanced on the purchase & the amount of interest on both Paw-229. 1 Ver-49.

So the rule that equitable interests have priority according to the period of their arising admits of exception - where one of the parties has more equity to call for the legal estate than the other - (that is - a title in equity & the legal estate) then it is not actually vested in him - Ex. A subsequent incumbrancer contracts for the legal estate (as a purchaser) & is bound to pay for it tho it is not assigned or paid for he is preferred - Paw 194 204-81- 2 Ver 486-2 Ver 600-2 Ch. 6-213. Equity considers as done what ought to be done -

But if the prior (legal) incumbrance attaches upon part only of the estate comprised in the latter mortgage it will protect the latter only, as to that part - Ex. A lease of 60 acres mortgaged to B - then the whole to C & then the

Priority of incumbrances and of tacking

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whole to D purchaser the first begins priority only of 20 - acres - But E shall never have that part without paying all that is due on the first & last mortgage - Paw 211 - 2 Vent 339. 1 Ch. Ca - 162 -

But if the first incumbrance bought in contains more than the third mortgage the third mortgage shall hold the whole till both debts are paid - If - Two first mortgages one of 60 - acres the third of 20 only - the third by buying the first shall hold the whole - Paw - 211 - 1 Ch. Ca - 201 1 Eq. Ca - 323 -

So if a subsequent mortgage in a prior satisfied judgment - statute - term - mortgagee which can be made use of at law begins priority as above - Paw - 214 - 1 Ker - 187. 4 And 318 2 Ker 20 159 - Hardr - 122. Com -

By a satisfied mortgage is meant one paid off after forfeiture 144 - 756 or 2 against which there is no other than equitable relief -

The last rule holds the notwithstanding were paid for the prior incumbrances Paw - 214 - 1 Ch. Ca - 15 - 1 Eq. Ca - 323. 246. 20. having possession of the prior deed is sufficient - So the prior incumbrances were obtained by fraudulent means as when the subsequent mortgage came to a man's study without leave & took out a satisfied statute Paw - 215 - 2 Vent 159 - 2 Jun 298 1 Ker - 52 - 20 -

But where the prior incumbrance is deficient

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in legal requisites it will give no priority to a subsequent mortgage - Can Sudg^t not clothe as required by 425 W.L. & M. - a recognition not an order so there they do not attach upon the legal estate purchased in. Can 215- 2 Ver. 234. 1 Pl. 540. 2 Eq. L. 592
Win. 54-

Subsequent mort^s can take no other than the legal estate
to his mortgage - & 4th mort^s purchase in the second - no priority
given - his original mortgage is still preferred to the 3^d (
1 H. 175. 2 P. 444 495) So if subsequent purchaser has not equal
equity. An A creditor by judgment or Stat. cannot by purchasing a
prior mortgage gain a priority to immediate intermediate mort^s
- for he is in no sense a purchaser - he only acquires his due
without his money on the credit of the land pledged & so cannot
equal equity. Pow 224a 2 P. 491 2 Ves 662 P. 444 494-810-
1 Eq. 6-325-2 Atty 347. Pow. 326-

A prior mortgage has been made & will give no priority unless it is specified that it is to take precedence at the time of the sale, for before that time the estate remains as an est. & defeasible &c. & the legal estate may be destroyed by Mo. & Pow 228. & W 158. not absolute - Equity does not interfere till after forfeiture.

To a minor incumbrance having
the legal estate may take a subsequent mortgage (advanced by him
upon the same security) to his mortgagee & given priority as
to the last sum against more incumbrances. (i.e. suppose
if he had no notice of the more incumbrances when he advanced
the second sum.) Ex. L. mortgagee signs to both 3rd & 4th L. & without
notice of Ex. mortgagee lends more money upon the same

A mortgage may purchase an outstanding title to protect his
own estate and confer it agst Mo: 5 Nil 250

A prior mortgagee who has obtained leave to sue
a junior mortgagee & entered into judgment
against the latter both as mortgagor & the 2^d
mortgagee having security on 2 estates A & B a
provision to secure the prior mortgage which has
the security on the estate A only cannot be
compelled to resort to the estate B in the first
instance 10 C.E. 1649 vide Atterdale & Cooper 8
Par 382 for the genl rule that where one has a
security on the two funds & another on but one of
them he shall first resort to the fund on which
the other has no claim

Priority of incumbrances and of tacking

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security having bought by mortgage - & when note for the
loan was against C - Paw 229 - 1 Ch. Ca 119. 2 20 - 2 Ch. 352
2 Bth. 494. 2 Ves 662

So if there be less mort^{gs} the first make a subsequent
loan taking a judgment for security he may tack this to his
mortgage - Paw 230 - 2 Ch. 252 - 2 Bth. 494 - 2 Ves. 662 - &c -

But if
the prior mort^g is the best case has noticed the intervening
mortgages at the time of lending money upon the
same security he cannot tack against same mort^g (Paw
230 - 1 Ch. 226. 2 Ch. 594) Equity not equal - Same rule
where subsequent mort^g purchases the legal estate to protect
his own incumbrance (Paw 231 - 2 Ch. 231 - 2 Ch. 119) He
cannot tack if he had notice -

Exception to this general rule
as to notice when the prior mortgage is defective - Have a
subsequent mort^g with notice shall have priority - & mort-
gage to be by defective title consequence - then to B who
had notice it is - for the legal title is in B. abolition
(Paw 204. 32 - 3 B. 644) q. i. Where equal equity is in
second mort^g? Would not Equity deem a sufficient wrong-
ance to the first?

But a defective security will be enforced
in Equity against creditors who have only general not
specific liens - as judgment creditors - they do not originally
take the land as security & they come in under the mort^g
who is bound in conscience to make the wrongance good
- therefore postponed to mort^g the the wrongance is defective

Priority of incumbrances and of lacking

Law 244- 2 Br 240- 2 Pl 101- 2 Cr 22- 2 Vern 564- 1 East 449- Equity
not equal-

If the first mortgage deed contains a clause making the lender security for future loans such loans will have relation to & be taken as part of the original contract - therefore will be considered to an intervening mortgage of the first mortg. at the time of making the subsequent loan had no notice - so the first mortg. has notice of it when he makes another loan if second mortg. had notice of the clause Law 136.85- (Vint 2-) But if second mortg. had notice - first would hold I consider - have equal equity Law 220.

In the above case when notice of the interest of a third person) varies the rule of priority - if notice is changed by one party, it must be positively denied by the other in his answer - Lends he is taken to have had notice (Law 253- 2 Cr 226- 2 Vent 261- 2 Ves 450- 3 Pl 243-) So if 2 parties facts are changed as amounting to notice they must be denied Law 254- 2 Ves 450-

If notice is denied in the answer & proved by one witness only the bill will be dismissed - not sufficient evidence of notice - note against oath (Law 254) See 6 Cr 5- 2 Cr 101 Lends if there are many circumstances corroborating the evidence of the witness. (Law 255- 2 Cr 19- 141-) In the last case if the evidence & circumstances are not satisfactory an issue is directed in or out of Lend - Lends when there are no such circumstances - Law 255- 8 Cr 9- 12 Cr 64 52

Notice

1857

According to the preceding rule the right of taking a mortgage depends upon the want of notice in him who would protect his equitable by the legal estate. We pay to consider what amounts to notice -

Notice

Notice is of two kinds - actual & presumptive. Part 256 -

I. One is said to have actual notice when he is directly or indirectly shown the fact or has notice regularly given upon him. Part 256 -

But a flying report is not considered as giving actual notice. In A. being advised to lend money on a mortgage a stranger to the mortgage says to him "I have a mortgage of the same land" quoted 14. Part 256.

II. Presumptive notice is a conclusion of law that one has notice for a fact though there is no proof of actual notice. When one cannot make title but by deed which discloses a material fact he is deemed to have notice of the fact. In A. conveying to B. assuming a purchase of reversion - B. conveys to C. C. is deemed to have notice of A's power to revoke (Part 257-64. Also 310. 2. 662 & 316. 15. 316. 2. 89) So if A. claims land to A. and B. to B. again & mortgages the land to B. B. is ^{presumed} deemed to have notice that the land is charged with legacies - See 303 neglect for he claims title under devise - 184. 215 -

2. 11 -

There is case of an appointment of testator's personal property by an Ex^r - ^{not} required to have notice of the contents

1967

Notice

of the will in favor of creditors & legacies survives, by which
 it would be dangerous - besides the purchaser cannot
 know the amount of debtors & of the debts. Paws 265. Nos 13
 2 Alth. 236 - 2 Pl. 148 2 Vern 444) are so to satisfy creditors
 Lewis Senile Paws 265 - 2 Vern 444 - 911 - Lewis if any influence
 between S^r & purchaser to defraud creditors Paws 263
 2 Vern 60 18s 215 -

If a student making a prior charge upon
 an estate is desired among other houses to an intended
 purchaser he is presumed to have notice of the prior
 charge - Ex. a mortgage is made by indenture. mort^{or},
 duplicate is delivered to subsequent mort^{or} before he
 loans his money. Paws 266 - 2 Vern 284 2 Ves 486. Paws 271

So a recital in one deed stating or reciting in impl-
 ing that there is an incumbrance (on the land)
 created by another deed is deemed notice of the
 incumbrance to the person who has had possession
 of the former deed. Paws 282 - 2 Alth 54 Nos 287 -

What is sufficient

deemed one sufficient to put the party charged with notice
 upon enquiry one deed notice in Equity Ex. Infants
 entitled to an estate from a person in possession
 & received when they came of age & received rent
 ten years afterwards - holden to be notice. &c. Come
 by succession & tho they had not held it Paws 2⁵⁸⁵
 1 Alth - 480. 522 - Hence it would seem that possession
 & prior notice would be sufficient notice of an

A prior mortgagee shall not enlarge his demand beyond
what appears upon the record in consequence of a separate
agreement between him & mortg^{or} to the prejudice of a subsequent
mortg^{ee} who had no notice of such agreement at the time
of taking his mortg^{ee}. 7 Johns Ch. 16

Whosoever purchases an estate with notice that it is in possession
of tenants is bound to enquire into the estate of these tenants
it is bound by the answer they make 2 Has fr 1137. 13 de
120 7 Johns Ch 16 - L. 758 n 2 Price 300 5 Johns Ch 29 4 Linn. R 377
11 Memo 4th 201

Notice.

Also, a deed absolute may by fraud be shown to have been intended as a mortgage & under § 24, yet a bona fide purchaser who has paid the purchase money shall not if he had no notice be disturbed. & the mortgagee as regards his payment against mortgagee & his representatives for the money paid in discharge of the promise. (Page 202
§ 6 & 121. in Equity first at law unless a statute that passes in case of fraud -

36t R 155

Reimerle 112

incumbence to a subsequent one -

Notice to me, either my agent or council is notice to himself - Early agent is an agent to lend & my mortgage has notice of a prior incumbrance. Paw 22 - 1 Ves 619. 214. 85 - 2 Vern 54

This rule holds when one person is agent for both parties as is frequently the case in marriage settlements Paw 244 2 Vern 609. 1 Bro P L 244 - & one makes a person his agent ab initio by agreeing to a contract made in his name by the latter without authority. Paw 275 2 Vern 609. 1 Bro P L 244

Notice of an act of bankruptcy by one or more will not be presumed against subsequent mortgagee to prevent him from taking the legal estate Paw 280 Hall 65 1 Ves 579 -

A subsequent mortgagee takes notwithstanding an intermediate judgment for the judgment is a matter of record third persons are not presumed to be conversant to it. to prevent taking notice must be proved as in other cases Paw 288. 1 Ch. L 55. 2140

1. Is notice in Ch. a subsequent mortgagee take the same incumbrance being duly recorded? (Stat. 41.) 2. other words whether our towns records of conveyances mortgages be constructive notice? It seems to be on principle. Yet in Eng it is held that the registry of intermediate mortgages in registering

Police

conveyance is not constructive notice. Paw 280-12, L. 615
 2d 609-9 In a first mortgage after a second mortgage
 registered advances a new loan he may take. But
 could a subsequent mortgage take when an inter-
 mediate one registered? Paw 281, 90-1 according to
 Powell & May. But a subsequent mortgage following
 notice of a prior mortgage not registered will not
 gain priority by registering for he has seen the notice
 which the stat. intended. Paw 281, 609-712 11th 611, 2d 610-
 646. - 2d 664-2d 610 25

But a subsequent mortgage regis-
 tered is preferred to a prior one not registered if the
 subsequent mortgagee has not notice. Paw 280, 9, 11th 611, 2d 610-
 646-2d 25. 2d P. L. 425

A purchaser for a valuable con-
 sideration shall hold against a prior voluntary settle-
 ment tho he had express notice by st. 27, Eliz. - same
 rule extends to mortgages. (Paw 296, 315-1 L. L. 334
 Camp 280, 711 of East - If one purchases with
 notice of an incumbrance & then sells to one who has
 no notice the latter is not affected by it. So if a person
 purchases for a valuable consideration & with notice
 of an incumbrance from one who bought without
 notice - the last purchaser tho with notice is not
 affected by it. Ex. - a lady with notice - sells to B who is
 without - who sells to C with - Paw 295 P. L. 57 2d 610
 1 L. 571 - Sugd. 483-1 L. L. 331 2d 610 66-4-125

Where a subsequent purchaser whose deed is prior in time has notice at the time of his purchase of a prior unperfected deed the prior deed will bind the purchaser. 11 Johns 457 1 Green, 292 8 Johns 137 1 Burr 474 Debn. C 190. 191 1 Stee 664 36. 77

B. by fraud in which he was assisted by C. obtained a deed of land - B. afterward conveyed a judgment to C. who for a valuable consideration & without notice of the fraud assigned it to D. Held that the deed being null on account of the fraud the judgment created no lien upon the land & D. the innocent took the assignment subject to the rights of the debtor 2 V. C. 6 512 -

* If one take a mortgage by assignment from a mortgagor affected with notice of an outstanding title he will take subject to such title for his assignor cannot transfer a better title than he has himself. Par. 602 1 Ker 484

1. The first part of the paper is devoted to a general discussion of the problem of the origin of life. It is shown that the problem is one of the most important and interesting in the history of science. The author discusses the various theories of the origin of life, and shows that the most probable theory is that of spontaneous generation.

So when mortgagor's interest in a perfected
mortgage belongs on his death

Formerly great doubts whether the money due should be paid to the heir or Ex^r. (Paw 298) the mortgage being perfected. & this question was taken - If a bond were given & if the condition of redemption was payment to mort^{or} or his Ex^r without naming his heir the debt was to be deemed to the Ex^r - & even if in a mortgage in fee there was no bond or covenant - only the condition of redemption was payment to his heir or Ex^r or his assigns - here the money was deemed to the heir Paw 297. 1 Ex. C. 326. 1 Ch. C. 88. 2^d 187. 1 Vern 570

But since courts of Chancery have considered the contract as personal it is a rule in all cases that the money belongs to the Ex^r the interest being personal unless mort^{or} has manifested a contrary opinion. & if he has foreclosed or has obtained a release of the equity of redemption & taken actual possession - & if there acts he shows an election to consider his interest as real Paw 298-304- 109. 2 Vent. 348- Plac. 567. 1 Ch. C. 283 Ex. 57^d 187. 220 - For the loan or debt came from mort^{or}'s personal property. & the payment should accrue to the same funds in still if the money is made payable to the "heir or Ex^r" mort^{or} is at liberty to pay at the death either of them at his election - for this is a performance of the condition & here Equity has nothing to do with the mortgage - Paw 299- 1 Ch. C. 283.

The money being loaned on a perfected mortgage to the Ex^t -
The heir must redeem to mort^g - only a trustee where
the trust is extinguished. Paw 300.2 16th 283

Upon a perfected mortgage the money has been paid to the heir he is
compellible in Equity to pay it over to the Ex^t (Paw 302
2 Vent 308-) & the mort^g should die before forfeiture
in which case mort^g may pay the money to either
at the day yet it will belong in Equity to the Ex^t -
Paw 302. 2 Vent 351.

If there are several Ex^{ts} any one
may receive the money & his discharge will be good
Paw 302. 1 Eq Ca 319 -

The legatee of a specific legacy by mort^g
to the Ex^t does not lose his right to the money Ex^t \$100. -
Paw. 302. 2 Ph. & 187. 188. 412 So if mort^g disintestate
the interest belongs to his executor & the heir in
possession may be compelled to convey the land to him
Paw. 303. 2 Ph. & 50. 187 2 Vern 264. 193. 1 Eq 6328)
if there are no debts.

The mort^g release to the heir of
mort^g (the mortgage being perfected) yet the Ex^t is
entitled to the "estate" - that is - the estate of mort^g -
So the mortgage is foreclosed unless mort^g
has actual possession (Paw 304 & Vern 193. 2-4-190

But

If money secured by mortgage is entitled by mort^g
to be sold out in land (& sold on the year & a

Interest of Mortgagor's wife

marriage) it is bound by the articles & goes as land settled according to the articles made before marriage - The Ex^r excluded - Pow 307. 23 to 217.

If husband make a loan & take a joint mortgage they are not joint tenants as co-mortgagors in such cases would be but tenants in common - no partnership - This is the presumed intent - So if they foreclose the mortgage & then one of them dies - Same intent presumed - Pow 307 2 Ver 288. 1 Ch. K. 58 3 B. & W. 158 3 B. & W. 467 2 B. & W. 55 -

Interest of Mortgagor's wife

As the wife by joining with her husband in a fine may lose her dower as in the same way she may encumber it with a mortgage (Pow 311 1 Ver 294) tho her right of dower is paramount to that of mortgage under a mortgage made by the husband alone during coverture - Herish 277. Pow 312 -

A Jointure of land mortgaged may redeem them & she shall hold as well till she or her representatives are repaid the whole with interest for she has a right to have the land discharged (that is - where she not joined in mortgaging) 3 B. & W. 228 1 Ver 218 Pow 21. 313 1 Ch. Ca 271) This rule applies to cases in which the jointure is of the mortgage - for if it is prior it excludes the mortgage Pow 315 - 1 Ver 191 -

Interest of Mortgagor's wife

The same rule holds as to settlement vesting in articles only - not executed - & after the articles made before marriage he mortgages the land to one who has no notice - the widow may redeem. *ut. supra* Paw 214 - 3 Ba - 228 - 2 Vent - 343.

But if a jointress, after marriage joins in a fine & mortgages the land she shall pay her proportion on redeeming it - that is - one third of the principal - & tho she does not redeem she must keep down the interest during her estate - that is - I suppose if she is in possession Paw 314, 46 - 1 Vern 191 - 1 Ly. E. 316 - Gill. E. 2106 -

If first mortgagee lends more money on his cosecurity without notice of an intervening jointress he shall hold for it against the jointress the legal estate being in him & he having equal equity Paw 315 - 1 Ch. E. 119 -

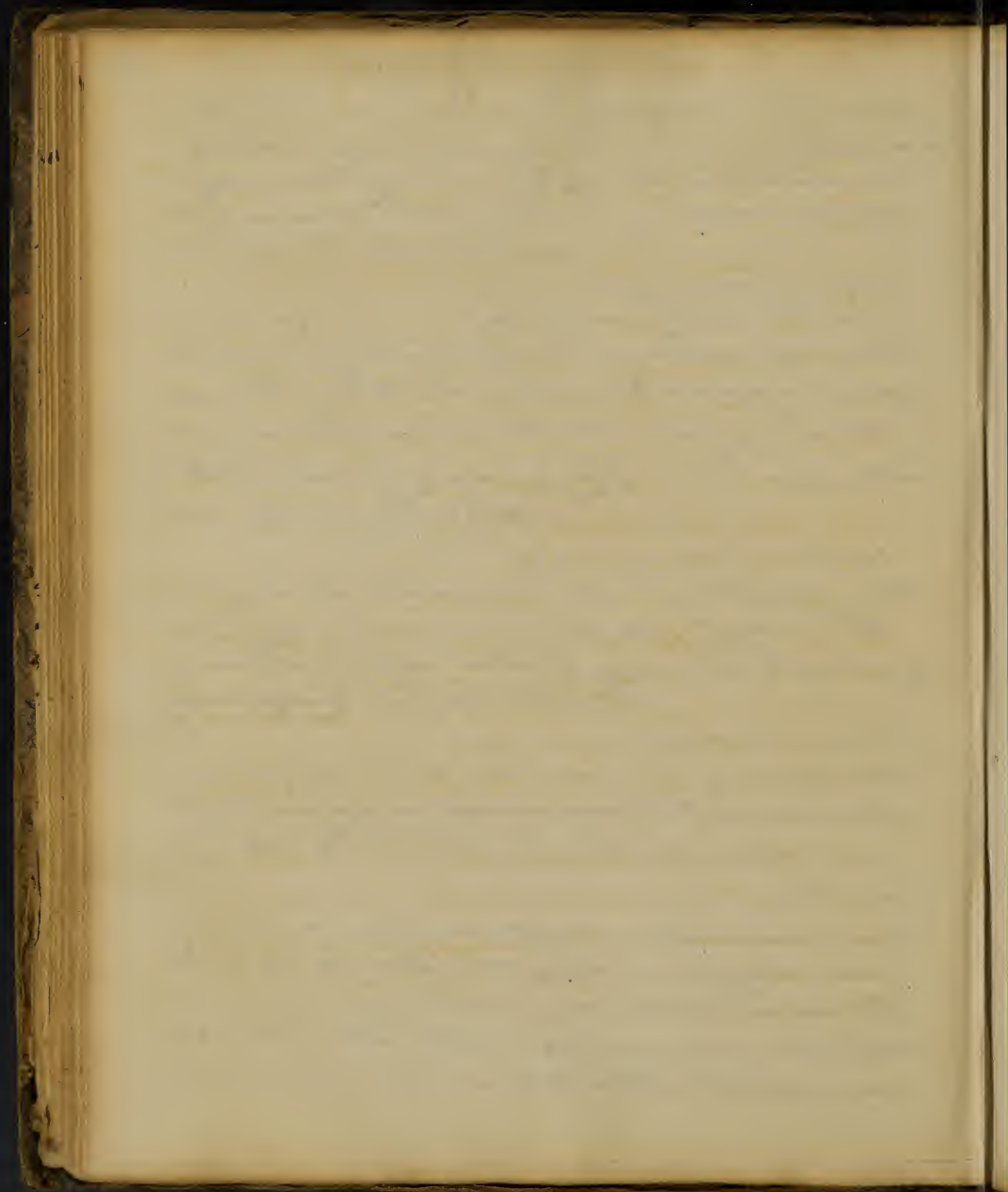
A jointress settled in mortgaged land after marriage if merely voluntary is void against second mortgagee tho he had notice Paw 315 - 1 Ch. E. 66 - 1 Anst. 284 - 11 - 9 East

If husband before marriage gives the wife a bond conditioned to leave her a certain sum if she survives him she surviving may redeem as a creditor Paw 316 P. Ch. 237. 2 Vent. 480 - That is she may redeem under those circumstances which entitle creditors to redeem -

1847
The first of the year was a very
cold one, and the weather was
very disagreeable. The snow
was very deep, and the wind
was very strong.

The second of the year was a
very warm one, and the weather
was very pleasant. The snow
was very shallow, and the wind
was very light. The third of
the year was a very cold one,
and the weather was very
disagreeable. The snow was
very deep, and the wind was
very strong. The fourth of the
year was a very warm one,
and the weather was very
pleasant. The snow was very
shallow, and the wind was very
light. The fifth of the year was
a very cold one, and the weather
was very disagreeable. The snow
was very deep, and the wind was
very strong. The sixth of the
year was a very warm one,
and the weather was very
pleasant. The snow was very
shallow, and the wind was very
light. The seventh of the year
was a very cold one, and the
weather was very disagreeable.
The snow was very deep, and
the wind was very strong. The
eighth of the year was a very
warm one, and the weather was
very pleasant. The snow was
very shallow, and the wind was
very light. The ninth of the
year was a very cold one, and
the weather was very disagreeable.
The snow was very deep, and
the wind was very strong. The
tenth of the year was a very
warm one, and the weather was
very pleasant. The snow was
very shallow, and the wind was
very light.

The eleventh of the year was a
very cold one, and the weather
was very disagreeable. The snow
was very deep, and the wind was
very strong. The twelfth of the
year was a very warm one,
and the weather was very
pleasant. The snow was very
shallow, and the wind was very
light. The thirteenth of the
year was a very cold one, and
the weather was very disagreeable.
The snow was very deep, and
the wind was very strong. The
fourteenth of the year was a
very warm one, and the weather
was very pleasant. The snow
was very shallow, and the wind
was very light. The fifteenth
of the year was a very cold one,
and the weather was very
disagreeable. The snow was
very deep, and the wind was
very strong. The sixteenth of
the year was a very warm one,
and the weather was very
pleasant. The snow was very
shallow, and the wind was very
light. The seventeenth of the
year was a very cold one, and
the weather was very disagreeable.
The snow was very deep, and
the wind was very strong. The
eighteenth of the year was a
very warm one, and the weather
was very pleasant. The snow
was very shallow, and the wind
was very light. The nineteenth
of the year was a very cold one,
and the weather was very
disagreeable. The snow was
very deep, and the wind was
very strong. The twentieth of
the year was a very warm one,
and the weather was very
pleasant. The snow was very
shallow, and the wind was very
light.



Interest of Mortgagee's wife.

1852

If he loans his own money & takes a mortgage in the name of himself & wife & dies she is entitled to it & survivorship if there are assets sufficient to pay the debts without it otherwise her being joined will not avail her - Paw. 217-2 Kern 683-2 P.W. 584

It is now settled in Eng. that mortgagor's wife is not entitled to dower in the equity of redemption of a mortgage in fee - therefore cannot as doweress redeem - as analogous to a pure trust of which dower cannot be. (Paw 321. 3 Sa 123. 3^d 403 1 Attk. 606-3 Pl. 229. Leath. 138-2 Attk. 625. 2 L. 138-61-1 Bro. Ch. 526-2 5 Pl. 760-5 Pl. Ch. 139. written) Rule settled when wife of mortgagor was supposed entitled to dower Paw 335-2 3 Pl. 758. Mead. 266 Ex. C 190-) This rule contemplates the case of a mortgage in fee before marriage - for a mortgage by husband after marriage will not affect the wife's right of dower 2 Co 94 - See also in Ct. Rule established in Ct. that the wife may redeem -

In Eng. a wife is entitled to dower in the reversion expectant on the determination of a mortgage for life or years - If the mortgage is satisfied Equity will remove it out of her way. Paw. 319-21 5 Pl. Ch. 133-2 Kern 493

Mortgages by husband and wife of her
freehold land his interest in
mortgage money due her

Husband & marriage obtain no other interest in
his wife's inheritance than as freehold during their
joint lives or at most during the life of his own
life by the curtesy - he therefore cannot make
a mortgage of it binding upon her & her heirs
for a longer period - If the mortgage for 500 years
& dies the mortgage is determined so that she
gains otherwise than by fine or recovery. Pow. 337
341. Co L. 351. 4 Vin. 57. 2 B. & C. 127.

In Et. Husband &
wife may alien or mortgage her freehold by
deed - Stat. 205.

Thus if she joins in leasing a fine
- in this way her land may be mortgaged or
aliened so as to bind her & her heirs, Pow 338
Call. 41. 1 Ro. 275. 1 Eq. L. 6. 28 ex 61.

But acts of
the wife (after coverture) amounting in law to a
new grant or re-execution will give validity to
a mortgage made by both or by her during
coverture tho the mortgage was by deed only.
- If Directions to tenants in possession to attorn to
mortg^{ee} (the deed being in his hands) Pow. 341. Doug.
53. Peake 154. 2 Plow 127. 2 Ves. 526.

107

If wife joins a fine to secure a mortgage on her estate which mortgage becomes perfected - her estate will be liable not only for the original sum but if a part of it be paid & a further sum borrowed for that also. Pow. 343 1 Vern. 44- & Ch. C. - 98. If for more has the legal title & as much equity to have his money as the wife or she has has to have the loan -

If wife's land is mortgaged to secure husband's debt his personal estate will be liable in discharge of it the wife levies a fine & to the exclusion of creditors Pow 343 10 B. 10. 264- 2 Vern. 604-89-

If the wife surrenders her jointure with a fine to secure husband's debts yet she does not by this absolutely part with it. When the incumbrance is paid off there results a trust for her in Chancery to have her jointure. Pow 346 & Ch. C. 161- 1 Vern. 213-

If wife gives in immediately her own estate to answer the husband's debts she is considered in Chancery as to his heir or standing in the place of mortgagee & entitled to satisfaction out of his assets. Pow. 346- & Ch. C. 384-

If some sole ^{more} mortgagee & upon the marriage the husband or other a settlement upon her in consideration of her fortune this is considered as a purchase of her mortgage (as of her dower in section) & if he dies he living it will go to his heirs. Pow 348- 2 Vern. 51

1 Eq. 2 69- This rule does not hold it seems in case of a voluntary settlement after marriage - not void and as a purchase (2 Att. 498) but settlement after marriage in consideration of an accession to the wife's fortune is not a purchase of the accession there is no contract on the wife's part - she cannot bind her fortune Bau- 249.

If the settlement thus made before marriage is expressed to be made in consideration of the wife's it is not a purchase of the rest - Bau 350. 3^d Ch 63- 1 Eq. 2. 70-

In an indentured agreement to settle a portion in consideration of wife's portion is a purchase of her fortune. tho made before it is made so being in no secret - Att. 498 Bau- 357- 3^d Ch 312- Gilb. Eq. 2. 70. 1 Eq. 2. 70-

Settlement by husband is not a purchase (not supra) if it falls short of the value agreed on - & she will hold the mortgage or other property after his death even against his creditors Bau 352- 2 Vern. 68- Freem. 102- 1 Eq. 2. 68-

But husband is entitled to his wife's mortgage and in action if he redeems the mortgage to possessors during coverture tho he make no settlement Bau 352- 3^d Ch 312 2 Vern. 501- 1 Eq. 2. 68- 3^d Ch 312

But redemption or assignment of the mortgage by husband is not redeeming

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within the rule into possession unless it is for valuable consideration - If voluntary the assignee has no higher claim than the husband himself would have if it were not assigned. Par. 356 - 2 Vern 401. 170. 5th Ed.
118

If his creditors get possession of the wife's mortgage so that she is obliged to apply to Equity for relief the court will not interfere to take their advantage from them (Par. 357. 12 Lw. 458 - 8 197.) Ex the interest assigned to husband's assignees he being bankrupt & all the writings being delivered to them (Par. 361 -) But if she had possession & the creditors were obliged to apply to Equity the court it seems will not interfere in their favor - Equity (Par. 358. 12 Lw. 382 - 459 - 2 216) But if they would make a reasonable provision for her - since the court would interfere in favor of the husband himself on other considerations Par. 359 - 61

But Equity will interfere against the wife in favor of a specific assignee of husband (for valuable consideration) of wife's mortgage - He gives credit to the property not to the person & so he has a higher claim in Equity than assignees under a commission of bankruptcy (Par. 360 - 2 427 12 Vern 270 -)

A loan agreement by husband to assign wife's mortgage as security for a debt with delivery of the deed will leave the wife in

1179. Out of what fund mortgages are to be redeemed.

Equity has tando - that is - to the amount of the debt
to be redeemed. Pow 364 2 Ctr 207. 2 P. W. 364

Out of what fund mortgages are to
be redeemed

General rule in Equity that the fund which has been
imposed by constituting the debt must be charged
in the first instance with the payment - therefore one
mort^g debtor his personal property in the first instance
is to be applied to the discharge of the mortgage
- the Ex^r then if he has assets is compellable to advance
the necessary money for benefit of the heir - Series of mort^g
shows a contrary intention. Pow. 368-410-16 - Sel. 449
Eq. C. 209. Galb. 54 - Harv. 512 - C. B. 520 - 5th. 358 -
P. W. 61 -) & tho the heir is unable on the bond yet he
may compel the Ex^r (the having assets) to satisfy the
debt - Pow. 369. et al sup - Summus in favor of the equity
claim of an Ex^r of redemption - Harv. 512 - Pow. 370
5th. 477. 1 Ctr 487. Contra but not Saw 2d 435

If the mort^g sequestrs his personal
estate among his relations still it must be applied
to the discharge of the mortgage - for mort^g claims
in a debt & the personal fund is first liable for debts
(Pow 374. 5th. 61-477. Galb 54 - 2 Ven 701) & does the
rule extend to any other than residuary legacies?
Lives of testator directs otherwise - as if he wills excepts

Out of what fund to be repaid

1089

exempt his personal fund. (Paw. 374-1 Ves. 51-) & the real estate of testator is charged with payment of debts the person yet this renders it liable only for the satisfying of the personal fund - but if real estate is devised "to be sold" for the payment of debts the the personal fund is not applied in case of real (Paw. 375-1 Ves. 51-1 Lec 203-2 Ves. 78-1 Eq. Cas. 271- P. Ch. 451) More^{over} devise his real estate which includes his Equity of redemption to be - & his personal estate to be & charge both with his debts -
- Personal fund applicable to pay debts - Seem if the Equity of redemption were devised "to be sold" to pay the mortgage -

On the rule that if the personal fund shall be applied to discharge the real estate is in many accounts to operate in favor of the heir to the prejudice of simple contract or general legacies (tho it holds in favor of the heir as against the 2^d & residue of legacies) & if the specialty creditors resort to the personal fund & exhaust it the simple contract creditors & general legacies are preferred to the heir - (General legacies seem to be contradistinguished from residuary) & they may resort to the real estate in Equity pro tanto - (Paw. 377-35- Dalk 53-2 Ch C 45-1 Ves 698-

Same rule holds in favor of simple contract creditors & general legacies against mort^g devise - that is residuary devise (ex 6) (Paw. 378- Dalk 53) It holds in all cases in favor of the general legacies unless the devise is specific - & they

Out of which fund to be redeemed.

may resort to the real estate pro tanto. 21. Sup -

But if

one devises his real estate (Ex. in equity of redemption) specifically & dies leaving debt & legacies & then specifically conditions against the personal fund the general legatee cannot come upon the devise pro tanto for the devise is specific & a general legatee never takes from a specific one - A "specific devise" seems contrasting with a residuary - Paw 379. 84 - 10. W. 678 - 402 - "All my real estate" is specific - "The rest of my real estate" is residuary. Paw 282. 21. 391

Where the descent is broken & the heir at law of mort^m made to take by purchase under a devise, he if the devise is specific will feel within the last rule - He is then a specific devisee Ex. a mort^m in fee devises to his eldest son in tail. Paw 385 - 10. W. 681.

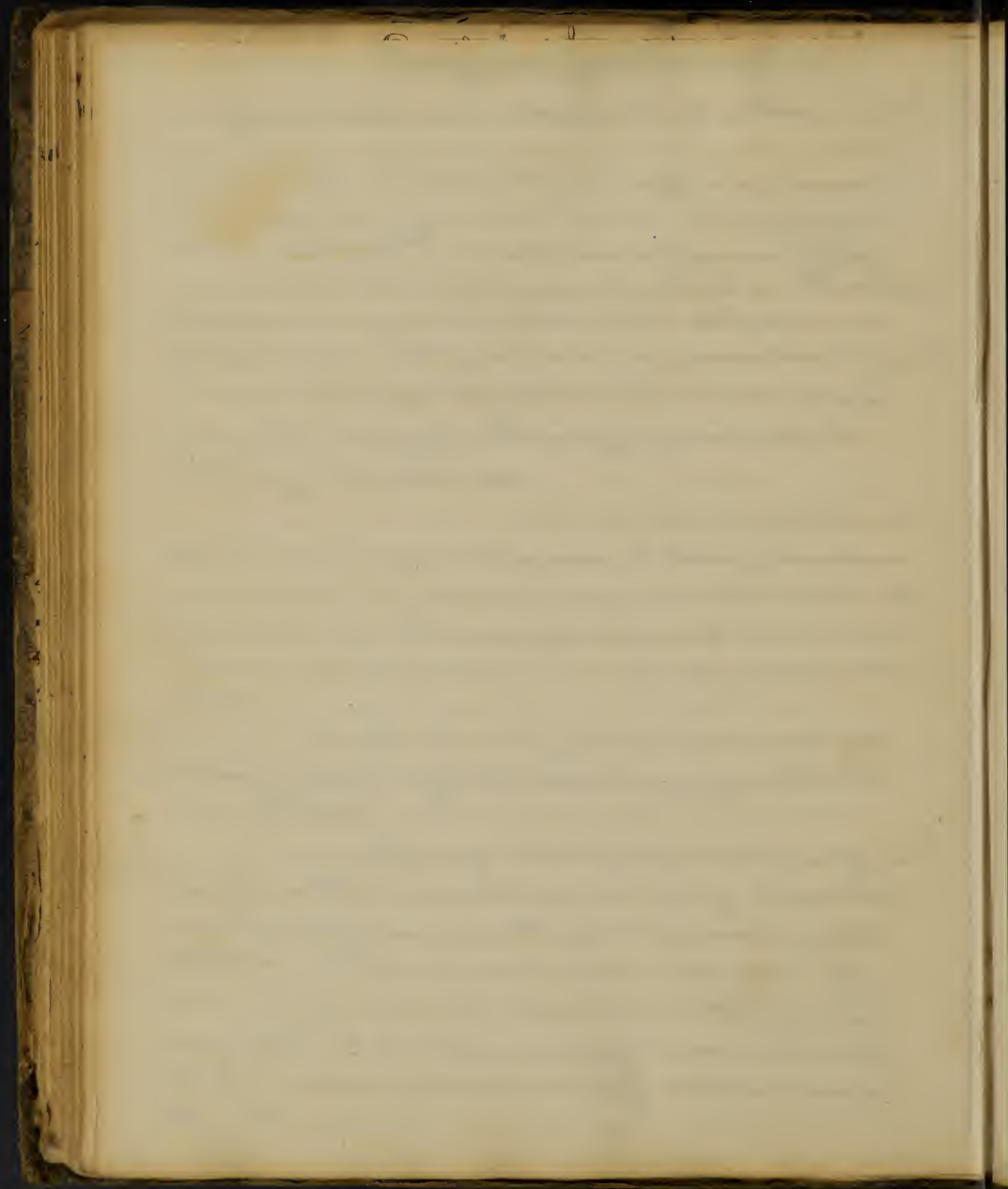
On the other hand heir of mort^m is not entitled to the aid of his personal estate specifically bequeathed. Paw 386 - 10. W. 693 -

Money may be the subject of a specific bequest but it must be so circumstanced that it may be identified - distinguished from all other estate or monies of the testator Ex. £100 - redemption 2 1/2 bond" (Paw 386 - 10. W. 298 - 10. W. 127. Thus the mort^m devises the equity of redemption to A - & £100 in a lease or a certain lease to B - A is not entitled to B's legacy to disencumber the estate -

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Out of what fund to be redeemed

Case 2

1849

not to make a bequest of personal estate specific it must be clear certain & exactly defined - Ex. £100 without more is general" Pow 388. 91. 1 Pl. 539. 246. 422.

The most common devise
"his estate with the immembrances thereon" ~~the devise~~
~~conveys the real estate~~ yet if there are no other words
showing an intent that devise should take effect
the personal fund is first to be applied according to the above
distinctions to discharge it. Pow. 392. 2 Pl. 586. 1 Bro.
Ch 252-461

And if there is an overplus on the face of the devise will
a clear positive intention that devise should ^{take} the estate
disencumbered the real estate in the hands of the heir
shall be applied to discharge it. Ex. Now a devise
an estate in fee & an estate for three lives to G. (this
being an husband & wife) - then purchase the reversion
of the lives which is a reversion as to them - there is
clear intent to discharge it the heir. Pow. 393. 8. 203. 5
2 Litter 1124-

If mortgagor sells or assigns his interest the fund of
the assignee becomes a claim (or assignee's debt) to his
personal estate to discharge the estate - for the personal
estate of assignee is not increased but diminished by the
purchase. (Pow. 410- 1 Bro Ch 101-) Some rule as to
assignees devisees -) some do. 1 Bro Ch 454 Pow 412-

Is the
money due on mortgage is not properly the debt of the owner
of the equity of redemption the estate mortgaged shall bear

the lender - The personal debt not liable - for his personal
 fund has not been lentified. 24 Nov²³ his (pledges his own
 land as additional security & then) devise the land to
 C. - The devisee shall not have the aid of the personal
 fund - Raw. 412. 16 - Bro. Ch 454-8 - 11 R. 211

Of the interest of money secured by mortgage

Lawful interest in Eng. under the 12th Edw. is 5 per cent. (Raw 221)
 In Et. & C. 6 per cent. Stat 421-

General rule that reserving more
 makes the contract void - reserving more incurs the penalty
 which 30th 42 Edw 2253 Tany 223. 2 H. 241 8539. 2 184-

Said by P.
 Resonable that a mortgage is secure for 5th more reserving
 6 per cent the mortgage is void (Raw 421 3 Edw 154) This must
 mean a reserving in person of a private original
 original agreement - or a reserving at the time of the
 loan amounting to an illegal reservation.

Also holden
 by 2 H. that a contract made in Eng for a mortgage
 of lands in the W. Indies is unenforceable if more than 5 per
 cent is reserved (Raw 421 - 2 Edw 2nd 154 224) the true
 rate of interest is higher there (the payment in these
 cases is to be in Eng. I conclude -)

Reservation in Chancery
 between an agreement to pay 4. per cent. with a clause of

1871

5 Mand. 576

Interest of money secured by Mortgage

1084

increase to 5% if the debt is not punctually paid & an agreement to pay 5% with a clause of reservation & latter enforced - former not - penalty not enforced in Equity. *Paw 423 Dth 160 - B. 1000 481 - 2 L. 100 520 - 2 B. 100 516 280 2 Dth 482 -*

But a covenant to pay the conditional 4% per cent in the last is good in Equity. *Paw 424 2 B. 100 184 Dth 160 -* & conclude as accepted damages not as a penalty. *Dth 160 -*

On an agreement as above, to raise the interest from 4 to 5 per cent on non payment will be good in Equity, an indulgence & way of forbearance is actually given by mortg^{or} to mortg^{ee} - Not a penalty, in this case but a liquidated satisfaction in Eq. Where on non payment mortg^{or} sent the account to mortg^{ee} who adjusted it & claimed forbearance which was granted on mortg^{or} agreement to pay the addition. *Paw 424 - 3 B. 100 516 - 18. 100 502 -*

Interest upon interest cannot be regularly set off in Eq. *Paw 424 2 B. 100 516 - 2 L. 100 501 - 18. 100 502 -*

If mortg^{or} assign with the commission mortg^{or} all the money paid by the assignee & which was due to mortg^{or} shall be considered as principal & 4% interest - interest on the original interest. *Paw 426 2 B. 100 500 - B. 100 516 - 2 L. 100 501 -* In such case - considered as a contract between mortg^{or} & assignee & the latter shall be paid his debt & sum if assignee has not paid the money & the assignment is only enforceable to loan mortg^{or} with compound.

Interest of money secured by mortgage

interest *Bar.* 426. 12 E 227.

This amount between money & mortgage as to the amount of the debt is not conclusive on the tenant - he is not party to it - *Bar.* 426 *Hean* 132.

In tenant in tail in possession of land mortgaged is not compellable by remainderman or reversioner or issue in tail to pay down the interest - nor are his representatives after his death - for they are all in the power of tenant in tail. *Reine* or *recovery* *Bar.* 443. 12 E 42. 30. 30 E 235. - *Desire* his estate may last longer *Bar.* 444.

But if tenant in tail of mortgaged lands is an infant & his guardian in possession is compellable to keep down the interest - for an infant cannot have the control by himself & accept unless the king's writ which must not be granted for such a purpose *Bar.* 444 *Sol* 509 2 Leth. 427. 1 Ves 422. 80.

If tenant in tail does keep down the interest remainderman shall have the benefit of it - that is - is not compellable to reimburse the tenant or his representatives. *Bar.* 445 *Ves* 422. 13 E 228.

If *Reine* more ²⁰ after wards *Reine* more ²⁰ *Reine* more ²⁰ to take the profits without paying the interest still in power of remainderman the profits shall be applied to *Reine* more ²⁰ interest - that is the first money interest shall not bear out *Reine* more any longer than if the interest had been duly paid - *See* the *Reine* more will *Bar.* 453. 80. 12 E 20.

Interest of money secured by mortgage

1085.11

Wern 270 - 2 Ba 658

When a bond is given to mortgage the holder of it (that is bona fide) has of course a right to receive the whole principal & interest - for giving up the loan extinguishes the debt - But the holder of the mortgage deed has not by the position authority to receive more than the interest - because giving up the deed cannot revert the estate - The debt is the principal. Pau 453 - 4 La 158 - Wern 155 - 3 Ch 209. 1 Eq. L. 145 -

If money refuse to receive his money after forfeiture on tender made he loses his interest from the tender (Pau 454 - 1 Eq. L. 38) Provided mortgagee gives notice of his intention to pay six calendar months beforehand & tenders the money on the day which he appoints - Hence the interest will be allowed - Such tender will also bear mortgagee's Eq. or devise of interest - But in these cases the mortgagee must make oath that the money has always been ready for mortgagee since the tender & no profit made of it - Hence the interest will run on - & his oath may be contradicted (Pau 455 - 2 Ch L 208. 2 Pw 582) and in general there must be a strict legal tender to stop the interest Pau 455 - 2 Ves 372 - 68. 2 Atk. 90 2 Eq L. 603 -

But tender of a bank bill has been held to be good where mortgagee made no objection to the legality of the tender & mortgagee offered to exchange it for the money if mortgagee wished it - 1 Eq L 216. 2 Ba 659 14 Ed 229 Pau 466 & 468

Interest of money secured by mortgage

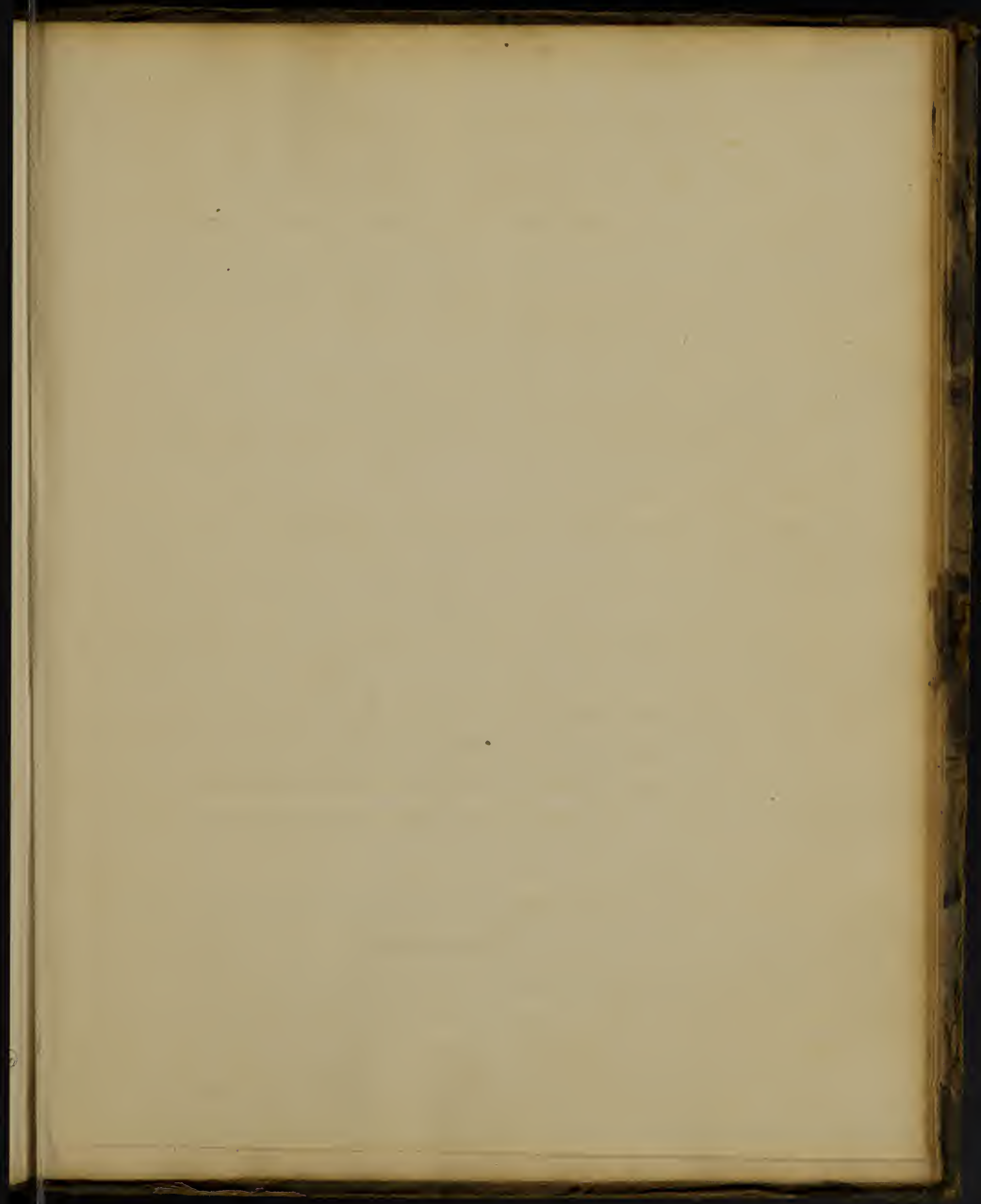
The money secured in good is regularly to be tendered to the person of mort^g - if no place is appointed in the contract - tendering upon the land (mort^g being absent) is not sufficient Pau 456 Cox 210 2 Eg. 510

If the time & place of payment are appointed by the parties tender must be at the time & place Pau 456 Cox 211-12
5 Ba Rend. 6-

So if no place is appointed in the condition & mort^g gives notice where he will pay tender at the place is good if the appointment is a reasonable one & no objection made to it by mort^g when notice is given Pau 457 2 Pl. 385-) & in some cases tender at mort^g's home in his absence will be sufficient where no place is appointed Ex. of mort^g wilfully keep out of the way Pau 457 1 Ch. C. 29-

But if mort^g has doubts as to any legal question arising out of the transaction he ought to have time to consult counsel before the interest shall stop on tender made - Ex. Mort^g presents accord of recovery to be signed by mort^g & containing convenient c^o Pau 458 & 2 other 90- 2 Eg 603-

The interest reserved upon a mortgage may be altered by a parol agreement subsequent - Ex. Reduced from 6 to 4 - (In the case decided the mort^g was off - it was rebutting an Equity - & would not agreement be enforced in favour of off - Pau 460 5 Bro CC 580



1847

Received of the Hon. the Secy of the Navy
the sum of \$1000.00 for the purchase of
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More must allow a fair cash rent such as might have
been received with reasonable care & prudent
also taxes & repairs 5 Pairs 2.

Method of accounting

the mortgage being a pledge not an alienation mort^g has no right to the rents &c till he takes possession - mort^g then not bound to account for the profits during his own possession - He is to pay the interest - Paw 464 2 ltr - 244 - 2^d 107. Doug 266 -

But mort^g must account for the profit during his possession - that is - they are to be applied to the discharge of the debt - Paw 464 &c 2 ltr 534 Vern 476 - in nature of a bailiff to mort^g -

If mort^g in possession manages the estate himself he has no allowance for his care & trouble - Since if he employs a skillful bailiff - Paw 466 - 1st 316 2^l 578 Same rule tho there is an agreement to the contrary - 2 ltr 120 - Paw 466 -

If mort^g in possession assigns to an insolvent person without mort^g agent mort^g is still answerable for the profits both before & after assignment - Paw 467 1st 328 - 2 Ch 83 - 3 Ba 656

Mort^g is to account with mort^g for the actual profits received (not as the case may be for the actual value of the land) unless it appears that he might have made more but for fraud or wilful default as if he had refused a responsible tenant who would have given more &c Paw 467. Vern - 43 - 476 1 Ch. Ca - 258 - 1st 328 - 3 Ba 657

Method of Accounting.

If more^r prove the mortgage let the lenders at a certain time at a certain time ~~the mortgage~~ will that will be considered as the price during the whole time unless the mortgage prove the contrary. Par 468. 2 Rep. Ch. 63

But if more^r take possession & keeps other creditors out he will be charged in their favor with all the profits he might have made after his entry. (Par 468. 1 Vern 270. 3 Rep. Ch. 20. 3 Ba. 608. Ex. Hemmington) If more^r permits more^r to take all the profits -

Still he is not bound to account even with the subsequent mortgage (when he permits more^r to take the profits) for any profits arising before he has notice of the subsequent incumbrance. in no fault till then Par 468 2 Rep. Ch. 209

If more^r permit more^r in possession to make use of his incumbrance (his title deed) to keep out other creditors he will be charged with the profits in their favor from the time at which they might have had possession but for his incumbrance. Ex. More^r permit more^r to use his incumbrance against more^r a pledgee he being a bankrupt - Fening Par 469 1 Vern. 267. 3 Ba. 608

the mortgage has assigned & a bill for redemption is not against a pledgee. yet more^r must be made a party that he may account for what he has received Par 471 1 Eq. 6894

If there are several mortgages an account stated between the first mortgage & more^r will be conclusive upon all the rest

Method of Accounting

unless fraud or collusion be proved. *Paw 271 1 Ch C 299. 2-32-3* *Ra 657. 1 Co. C 12-1* *2u* - unless taken under the authority of a court or before a master -

But the account between *more* & *apigne* will not conclude the *more* - for the profits are his - he is the debtor & he should be a party to the account *Paw 472 1 Ch C 28-*

An *apigne* after several *apignments* is not bound to account for the profits before his own time - that is - the former profits shall not be taken into the account against him - they shall be put off against the previous *Paw 472 1 Ch. C. 102 2 Ch. C. 392*

If *more* after having attempted to defeat *more's* title at law exhibits a bill to redeem all that *more* expended at law in defence of his title shall be allowed him in the account *Paw 127. 473- 2 Vern. 536-*

There are two modes of taking the account between *more* & *more* - one is by making annual rents - that is - by applying the annual surplus of the rents & profits over the amount of the interest to sink the principal - the other mode is by bringing all the profits into one aggregate sum & all the interest into another where there is a surplus of rents & profits the former mode is the most advantageous one to *more* as it keeps the accruing interest every year - The rule is that if the yearly rents do greatly exceed the interest of the debt secured bests must be made otherwise not - *Paw 474- 2 L. C. 584*

or at least the master is not bound to apply every small
exp. to the principal

Foreclosure

As Chancery after forfeiture will in favor of mortgagor
redeem so in favor of mortgagor the equity court will
decree a foreclosure - that is - order that unless mortgagor pay
the debt within a limited time he shall be forever
foreclosed which order is irrevocable except under
special circumstances - (Paw-475-2 Inst 198) If the
mortgage is of a reversion a decree may be had for
a sale of the estate to pay the debt (Paw 475-510)

If
mortgage is made to several all must be made parties on
a bill for foreclosure - so if a mortgagor assigns to several all
the assignees must be made parties (Paw 475 1 Br. C. 268)

Equity

will never decree a foreclosure till forfeiture of the mor-
tgage (Paw- 21.54-137.475 & Ventr. 232-2 Vent 265) till then
the equity of redemption does not exist & the mortgage
is redeemable at law -

On a bill for foreclosure the title
of mortgagor cannot be investigated - this must be settled at
law - (Paw-476-2 Ch. C. 244) that is - Chancery on such a
bill will not aid his legal title but will leave it as
as it is to be settled at law - The decree only destroys
the equity of redemption -

Mortgagor may pursue all his

Alpine a foreclosure of a mortgage the condition of which
 referred to a land which was misdescribed & the land
 referred to a note which was intended to be secured
 & which was also misdescribed such conditions were
 held immaterial & that it might be shown by
 parol that such land & note were the ones
 intended to be secured & loan 1. for the
 rental of the land is no direct affirmation
 & loan 229 of 10th 90 & do 457

When a note is payable when a certain event occurs
is collected the note is due when the event occurs
or, instead of an event of the premises can agree
in advance to the debt incurred it is collected by date
entry of March 24th 1854

Therefore a prom- is a part of the debt 46 1/2 30 62
50 521 1 Oct 202 (1853)

remises at the same time - to wit: see for the debt on the bond - for the possession in Ejectment & for foreclosure by his bill in Chancery. Par 477. Daughers - 2 (Att 344) & in Ch. after judgment on the bond he may levy the ex^{ts} on the same mortgage - But under special circumstances the court will grant an injunction to stay proceedings on the ejectment Par 477 - 2 Att 344 -

Chancery may refuse a decree for foreclosure when injustice would be the consequence of passing it. Ex More having notice of a voluntary & friendly settlement between the trustees to convey the legal estate to him to protect his mortgage - Par 287. 478. 2 K. 271 (Feb. 1800) left it to his remedy at law - an unfair breach of trust in trustees -

More's praying "relief" against more is equivalent to praying redemption ~~for~~ for redemption is the proper relief Par 479. 2 Att - 267 -

If upon a reference to a master to take the account on a bill to redeem more he does not redeem by paying the money according to the order the court on application by more dismisses the bill - on this account dismissal is equivalent to a decree for foreclosure Par 479. 2 Att 267 -

Ex more^{2d}

him brings a bill for foreclosure it is good cause of demurrer if more^{2d} Ex^r is not a party - he being entitled to the money Par 479. (Ch. l. 29) so if it

Foreclosure.

appears on the hearing that if mort^{or} Ex- or adm^r is not a party the Off. (mort^{or} heir) cannot proceed the modern rule. Pow 479. 2 Ch C 29.

But mort^{or} Ex- need not be made a party to the bill for foreclosure he has not the Equity of redemption - that is on a mortgage of a freehold - Pow 479. 2 Ch C 222.

But if mort^{or} heir has obtained a foreclosure it will be good altho the Ex- were not party for the heir may retain the land on, paying the debt to the Ex- or adm^r. Pow 480 2 Vern C - P 367.

But if the heir does not pay the mortgage money to the Ex- or mort^{or} the Ex- may compel the heir to convey the land to him. Pow 203-480 2 Vern 192. 367 - 2 Ch C 504 & C 328.

Once a decree to foreclose within a certain time number of months the time is computed by calendar months not lunar - Pow 481. 2 Eq C 605.

A decree to foreclose tenant in tail of an Equity of redemption will bind the issue in tail & all those in remainder tho they cannot see it (to the mortgage) Pow 481. 1 Ch C 297. The mort^{or} thus acquires all the right of the tenant in tail & the remainder were all in his power.

But if there is tenant for life & an Equity of redemption with remainder over the remainder man ought to be made a party to

If the debt on wh. the mortg^e. is secured be not
satisfied the lien on the land is not discharged - 262 p.
163

A tender of the amount due on the mortgage the not
accepted discharges the lien but the debt still remains
due to the mortg^e. 574 Ba. Landw. H. 18 Tolm. 110

The spigina of a matyara in 1800 - will be protected agt.
an action of Gentry. The, his assignment was obtained as
an auctioneer's record. 7 Louis 1 & 2 Cairns, Cas E 66.84
10 1/2 1800 1805 480 2 Lt. 132-134.

Foreclosure.

the bill for foreclosure Paw. 483-2 Cth 101- He is not in the power of tenant for life

If there are several immembrances some of whom are not made parties to the bill still the off may foreclose such as are made parties (Paw 483-2 Vern 518-) But those who are not parties to the suit are not bound by the decree Paw 483.92 3 Bep. Ch 84 2 Vern 518. 185-668

When all mort^g interest is devised away the devisee may bring a bill to fore close without making mort^g his a party- Unless no interest Paw. 485-1 Ch B 38-1 Co. B 218-

An infant may be foreclosed - but a day is given him to shew cause against the decree when he comes of age - within 6 months after words (Paw 432-55- 2 Vern 392 342-479. P 295- 3 Ch 185- 2 Ves. 23) words of the decree - "This decree is to be binding on the said - unless he shall within 6 months after he (being served with process for that purpose) shew good cause to the contrary" 3 Bep 128 Paw 486

If the infant shew no cause within the six months decree is made absolute upon him - but where he shew cause he may on motion put in a new answer & make a new defence (Paw 486 3 Bep 145- 2 Cth 532- 10 B 534 2 D 401 & Bro. Ch 201) This principle is to be served on the infant's coming of age - it is a judicial writ by way of relief from 3 Bep 145. 281 267 Paw 486

Enclosure.

But when he comes of age he is not allowed to go into the account and of course, nor is he entitled to redeem on payment he can show only that the decree is erroneous or unjust (Paw 48. 30. 6352) That is - he may take advantage of any reasons which existed at the time of the foreclosure & which if they had then been urged would have prevented the decree & in this way he may open the foreclosure Paw 48 p. 90 -

But it is said when the infant owns the Equity of redemption the mortgage is a loan that the estate lends for payment of the debt - this loan being without a day after age - for there is no forfeiture the surplus being his - but even then if he is decreed to join in the conveyance he must have a day. See Paw. 48 p. 1 Ver. 205 - 2. 429 P. 61. 184 30. 6354 2 Ver. 429 -

But if a feme sole or her executor mortgage land & the equity of redemption vests in her during her lifetime the decree to foreclose is peremptory - she has no day given her to show cause against it as there is to an infant - she is under no natural incapacity to act for herself - has voluntarily delegated her right of acting to the husband. Paw 48 p. 91 - 30. 6352 1 Ver. 205 - 2. 429 - 12 - 6306 95 - 10 Ver. 43 -

But this no day is given her by the terms of the decree yet it seems that after conviction she may, avoid the decree if

Enclosure

1278

True legal issue Paw 491. 2 P.W. 450. 3 238.

If more is guilty of any unfair conduct in obtaining a foreclosure the court will grant it - that is - revive the right of redemption - Ex More obtained a foreclosure pending a suit by mortgagee creditors to have the land sold for payment of debts - Ordered in their favour Paw 491.9. Mass 183 - 2 Ex. & Cal. 18 Vin. 476 2 Ex. & Cal. 209 2 Br. & C. 544.

If more obtains a foreclosure after judgment creditors ~~have~~ been given him notice of their demands & tendered him payment. Paw 492. 2 Ex. & Cal. 170 Less if more had no notice. que 2 Vin. 601.

But where a foreclosure is given in favour of a subsequent incumbrancer the first more shall be allowed all his expenses in obtaining the foreclosure. Paw 492 2 Vin. 85.

The time limited for payment on a decree for foreclosure may be enlarged upon special circumstances - Ex of the estate is of much greater value than the amount of the debt - Enlarged several times. Paw 493. Barnard 221. 2 Ex. & Cal. 495.

So where more was prevented from paying by rebellion - time enlarged. Paw 494 - 1 Ex. & Cal. 63 1 Rep. & C. 253

¹⁰⁹³
Foreclosure.

Foreclosure not opened in favor of a small volunteer
- Ex. Decisions her more has at least an equal equity
I am absolute estate at law - Pau 404 - 1 Ch C 214
1 Eq C 217.

In English mortgages there can be no
foreclosure - no forfeiture Pau 156-495 1 Ves 406
3rd Ch. 428 - 12 W. 291 2 Vern. 701.

If first mortgagee having
obtained a foreclosure against the second decides the
land to mortgage the foreclosure will be opened in
favor of the second mortgagee against mortgagee - second
mortgagee claim on the land is then revived - the
mortgage deed is a sort of estoppel to mortgagee
Pau 495 - 2 Vern 235 - 1 Vern 148. Sed 276 -

If mortgagee
after having obtained a decree to foreclose sues
on his counter security - Ex. Bond - This is a waiver
of the foreclosure (Pau 496 1 Eq C 217. see Pau 505 -
Bro P.C. 109. Decided in Ch that foreclosure with
proportion satisfies the debt 12 Ast 202 - ga.

Foreclosure
regularly not opened when mortgagee has acquired
for several years in mortgagee's possession under the
foreclosure Pau 499. 570 - 2 Bro P.C. 215 - 111 - 2 Eq C 171
599 - 15 Vin. 465 12 Bro P.C. 414

In Eng the practice is
it seems if mortgagee cannot pay the debt at the
time limited to make the decree absolute &

Where there are two mortgages upon the same property
belonging to diff^t individuals - & both by the same
Solicitor let, bills to produce - held that one bill
only was necessary & that the owner of the equity
sh^d be ch^d with the costs of one suit only 3 Paige
509 1 do 181 1 Sim. & S.

The rights of the mortgage are not altered by turning the
estate into money for the court directs the money to be
applied according to the rights of a classification purchase
of Dutton & Edeon 530 2 Page 46-

Paym^t of a mortgage extinguishes a power to sell under
it & if a sale is had no title is acquired 5th ed 272 it ceases
to operate either at law or in equity 18th ed. 7. 12 21 Mead
483 2b. do 541

If Off in a suit to redeem does not pay the
debt by the time claimed the court orders
the holder under the amount offered - 10 C. &
Ch 76. Dowrick v Wakefield 17 Ves 417

The following is a list of the names of the
persons who have been admitted to the
Society of Friends since the last year.
The names are given in the order in which
they were admitted.

1. *[Faint handwritten name]*
2. *[Faint handwritten name]*
3. *[Faint handwritten name]*
4. *[Faint handwritten name]*
5. *[Faint handwritten name]*
6. *[Faint handwritten name]*
7. *[Faint handwritten name]*
8. *[Faint handwritten name]*
9. *[Faint handwritten name]*
10. *[Faint handwritten name]*

11. *[Faint handwritten name]*
12. *[Faint handwritten name]*
13. *[Faint handwritten name]*
14. *[Faint handwritten name]*
15. *[Faint handwritten name]*
16. *[Faint handwritten name]*
17. *[Faint handwritten name]*
18. *[Faint handwritten name]*
19. *[Faint handwritten name]*
20. *[Faint handwritten name]*

a further order Paw 502-479. In Et- the first
decree becomes absolute because if more fails
to make payment on the day - Chancery in
Eng always open -

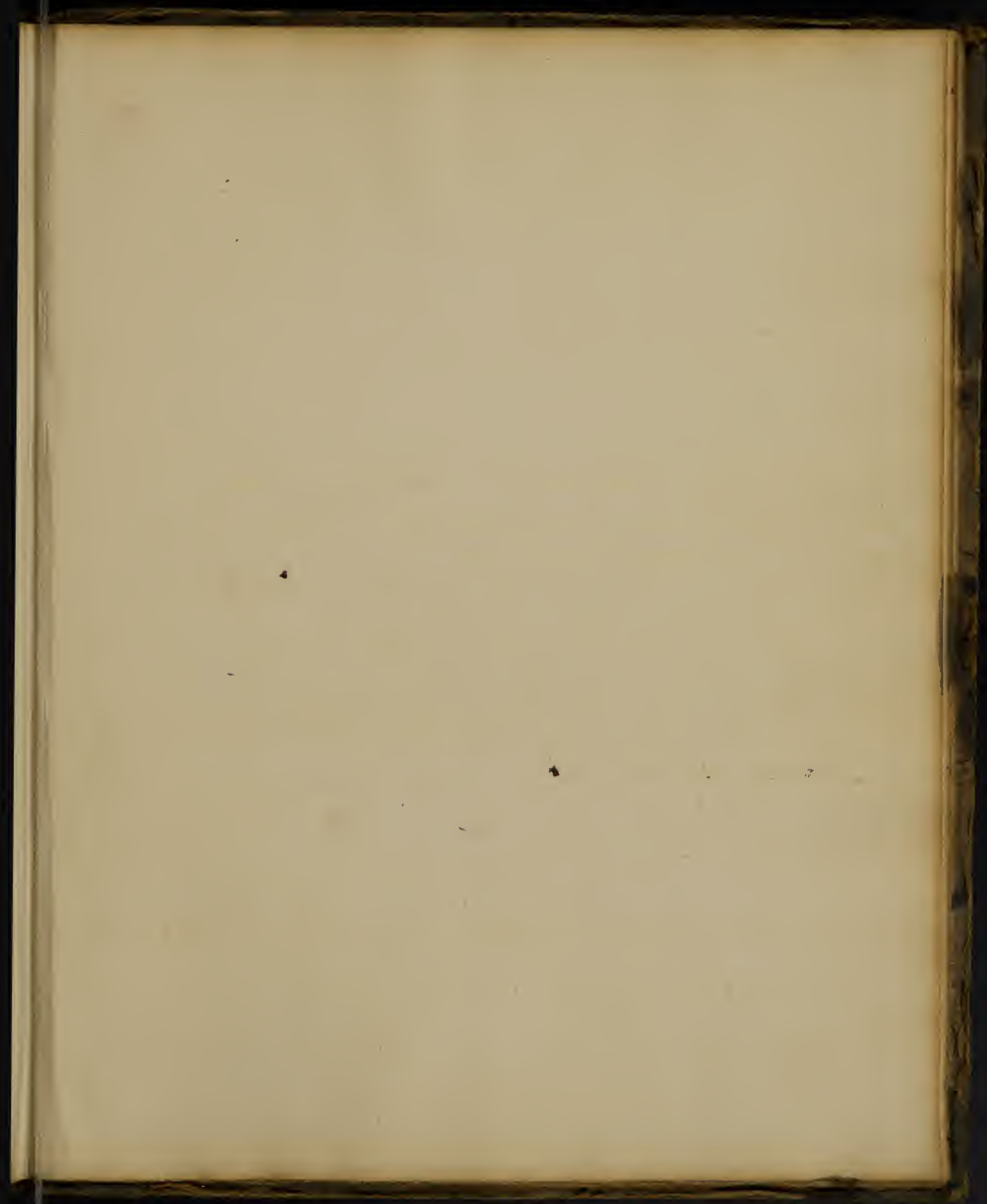
If tenant in tail of an equity
of redemption suffers a conveyance & sells part of
the land on a lease to foreclose or compel a
sale the part sold shall not be affected if the
residue is sufficient to satisfy the debt. Paw-
570 Wes 261

Our Superior court will not decree a
foreclosure unless the debt amounts to nearly the
value of the land (Ball vs Lewis) Hence one ground
for obtaining a foreclosure does not exist here - This
rule is now exploded

Foreclosure once opened in Et-
when money is going to pay the money owing
to the decree was taken in on the record &
thus prevented more having, & was to wait
a month longer - R. L. 200

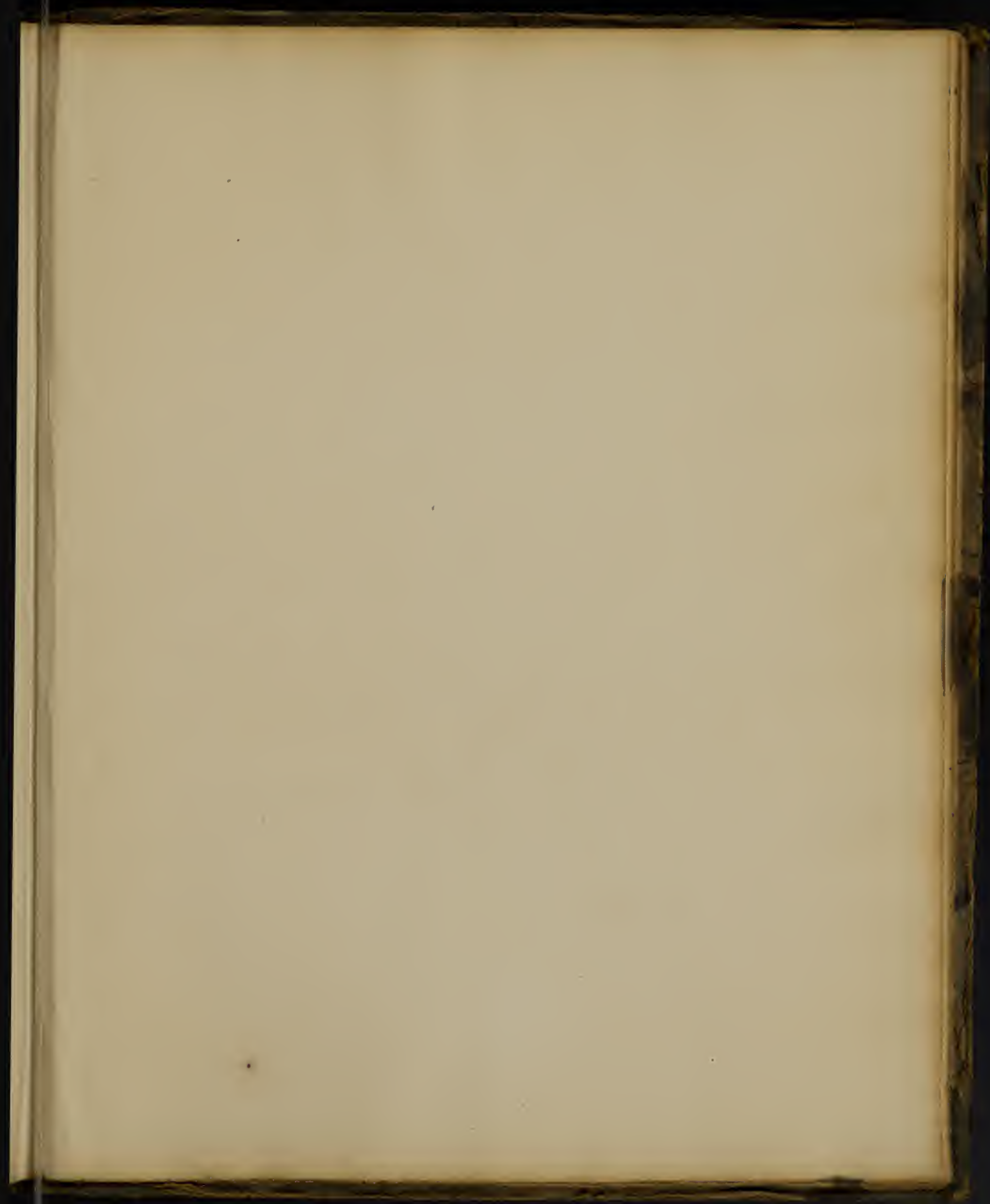
After a foreclosure of a mortgage made to two joint creditors
they become tenants in common of the land they do not continue
joint tenants - the nature of their title of estate being changed by the
foreclosure - If they take on by a new title as purchase R. L. 473

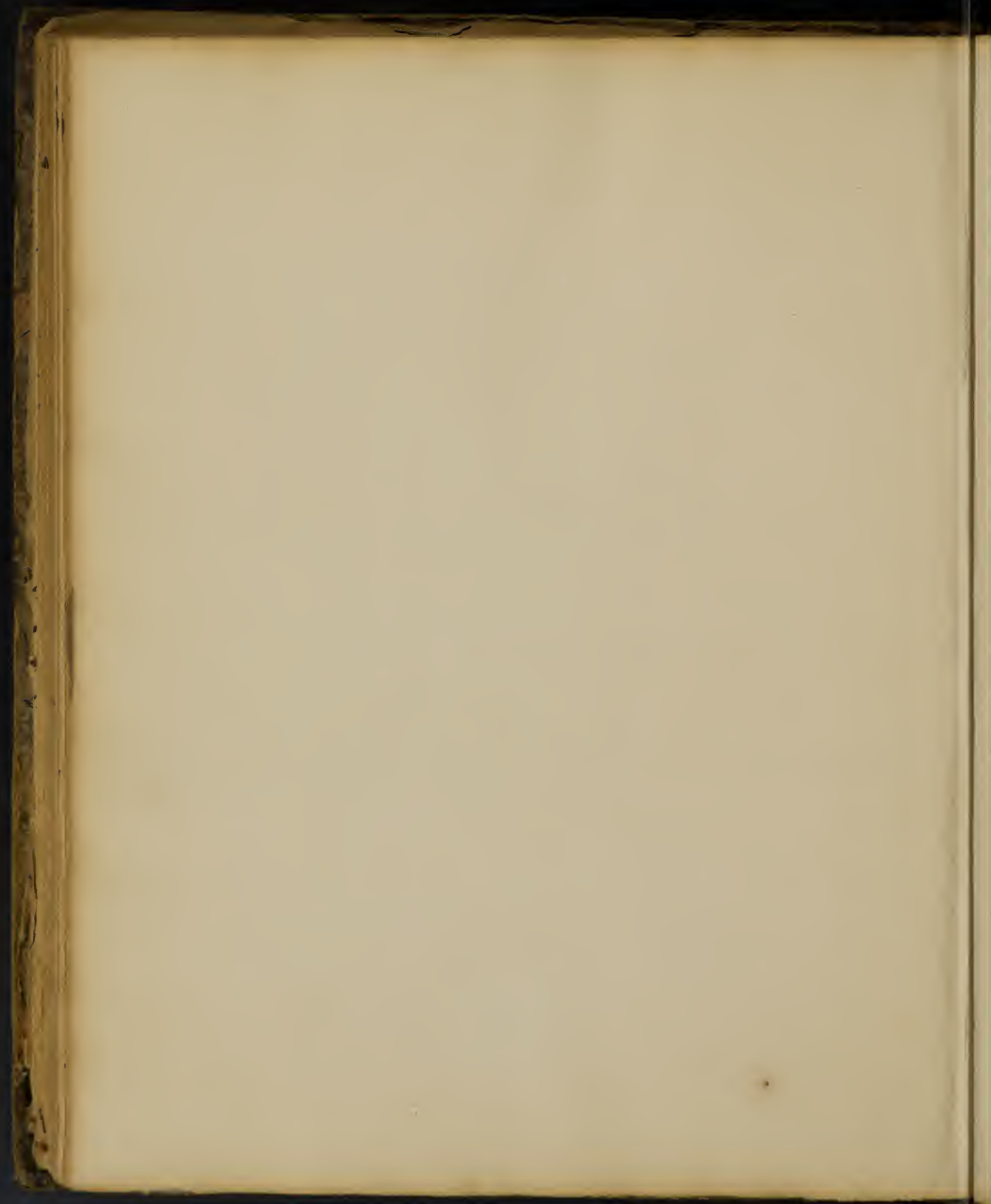
One who enters on land under a contract of purchase
but who fails to make payment according to contract and
disavows all intent to make them is as much as
wrong done as if his original entry had been without
color of right & if he enters before bill of foreclosure is
not made a party to the proceeding he is not bound
by the decree & cannot be turned out by an execution
on such decree 4 Hill 174 4 Linn Ch 609 High. 422
3 Linn Ch 459 20 Mead 260

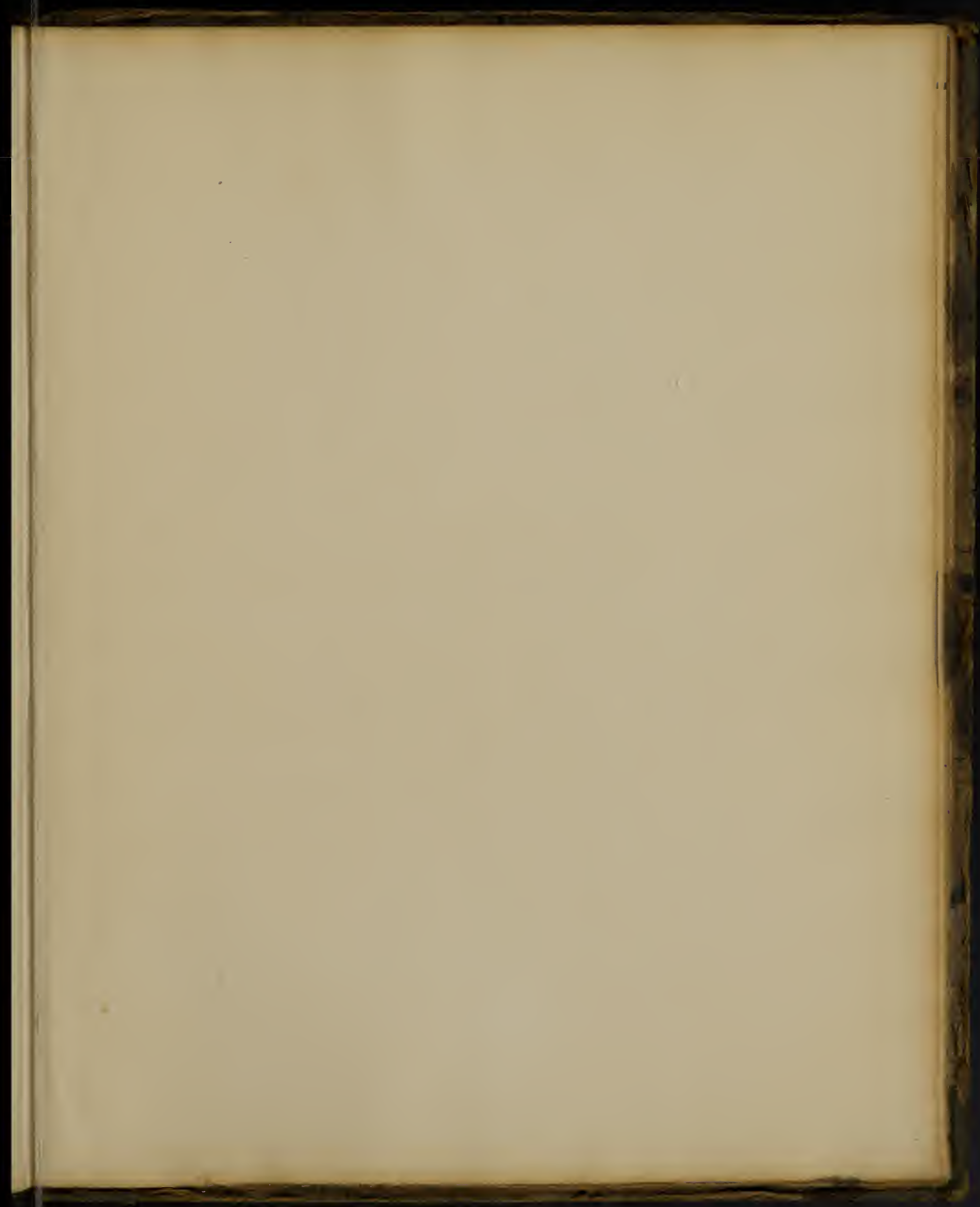


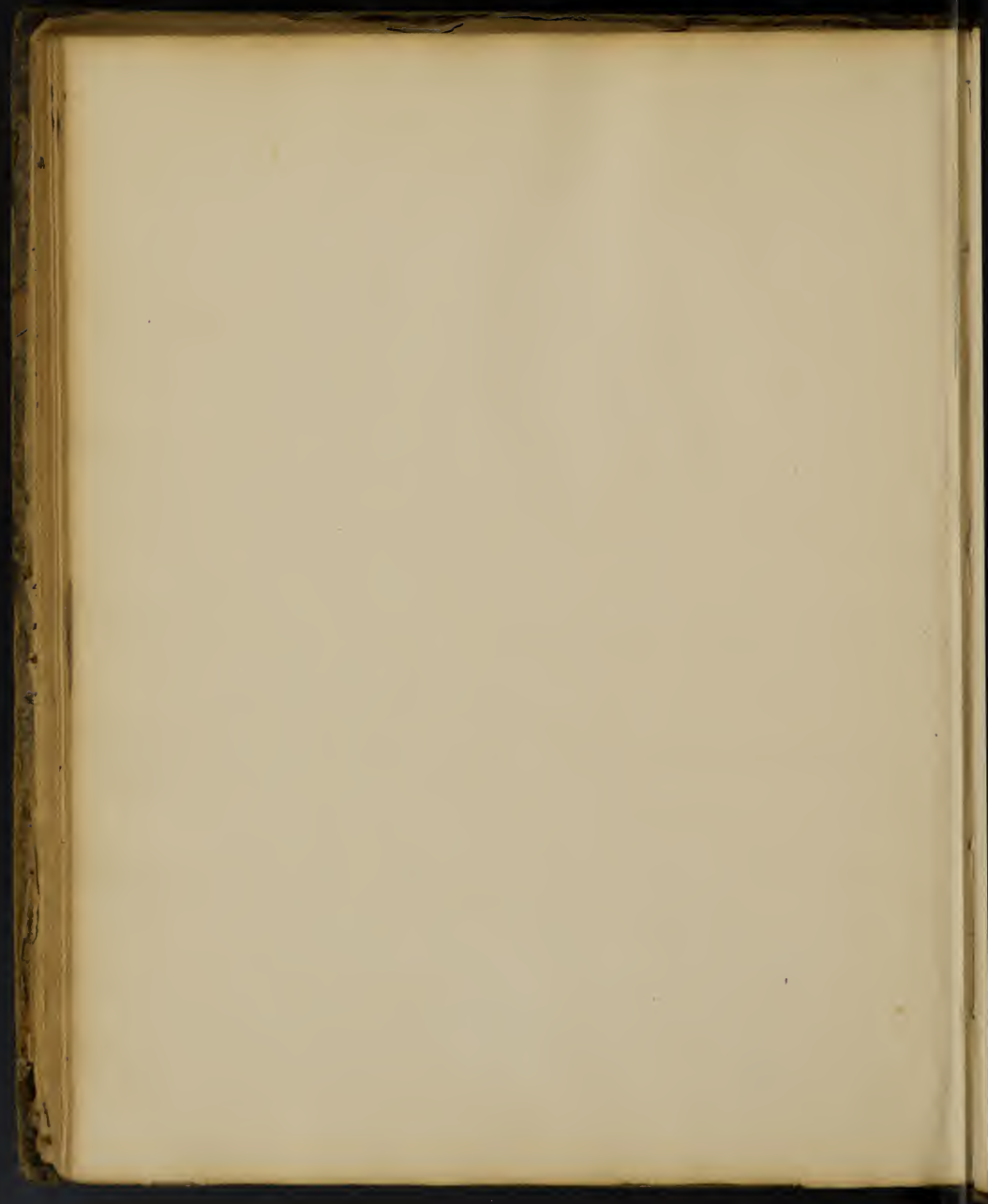
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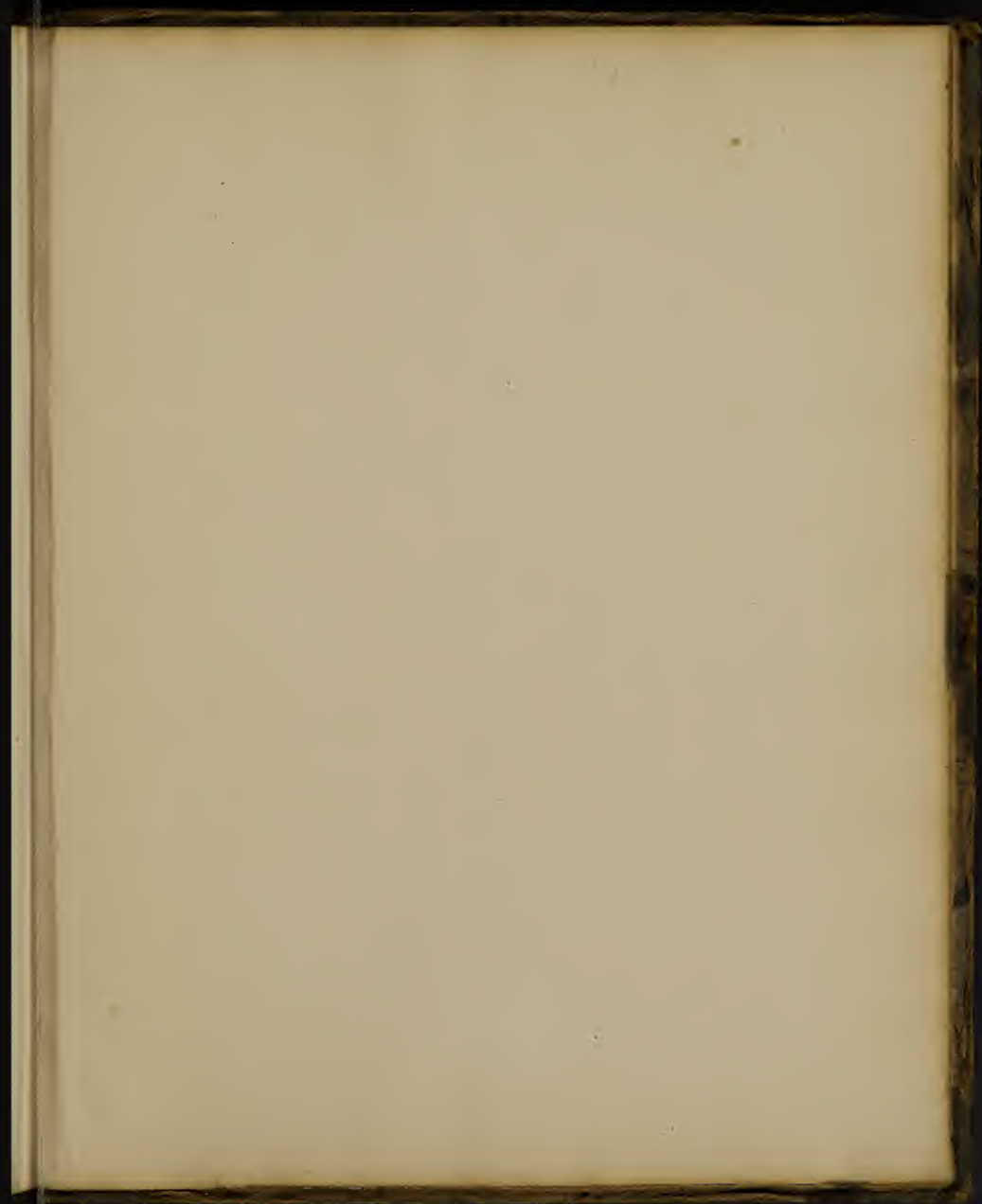
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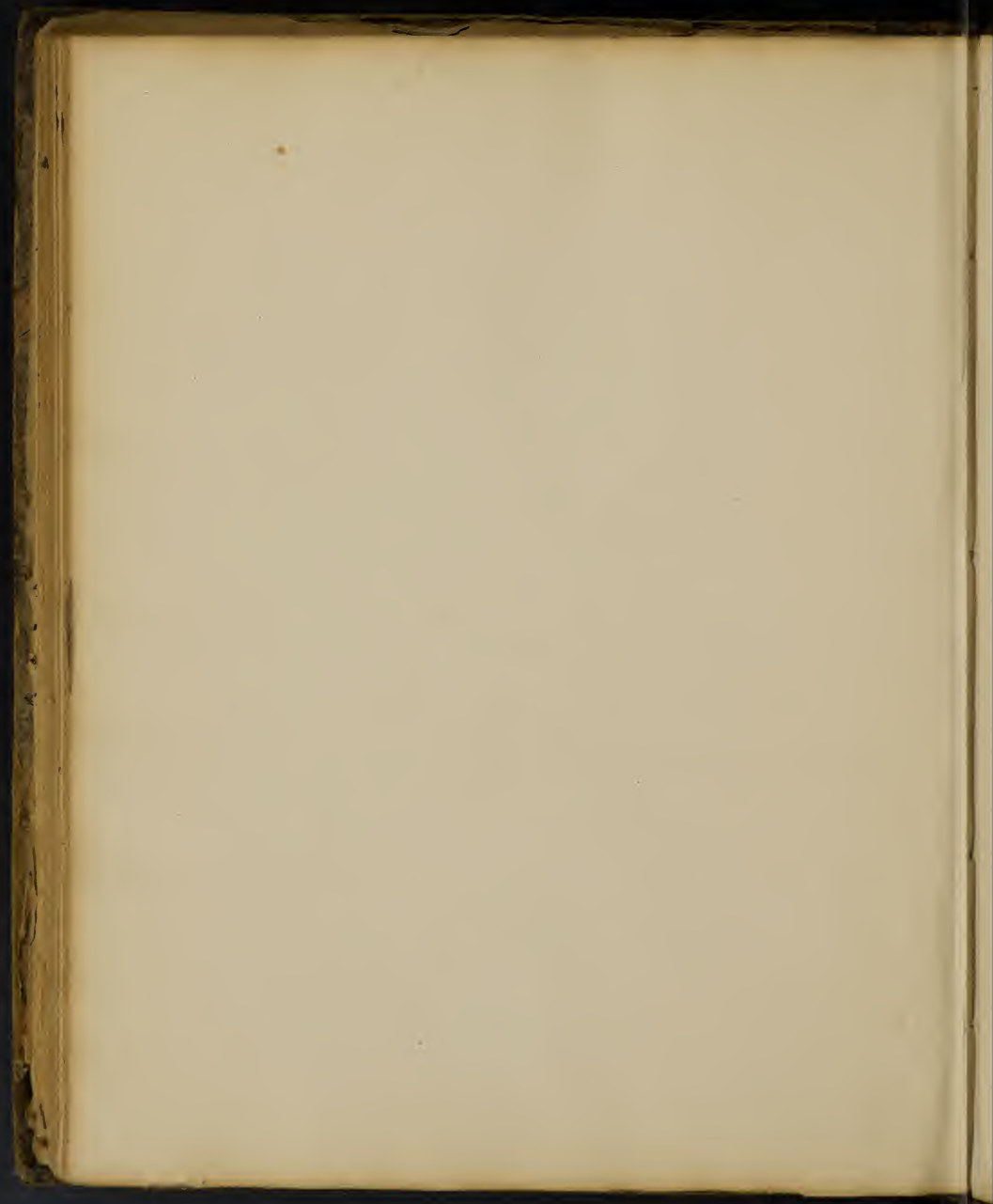


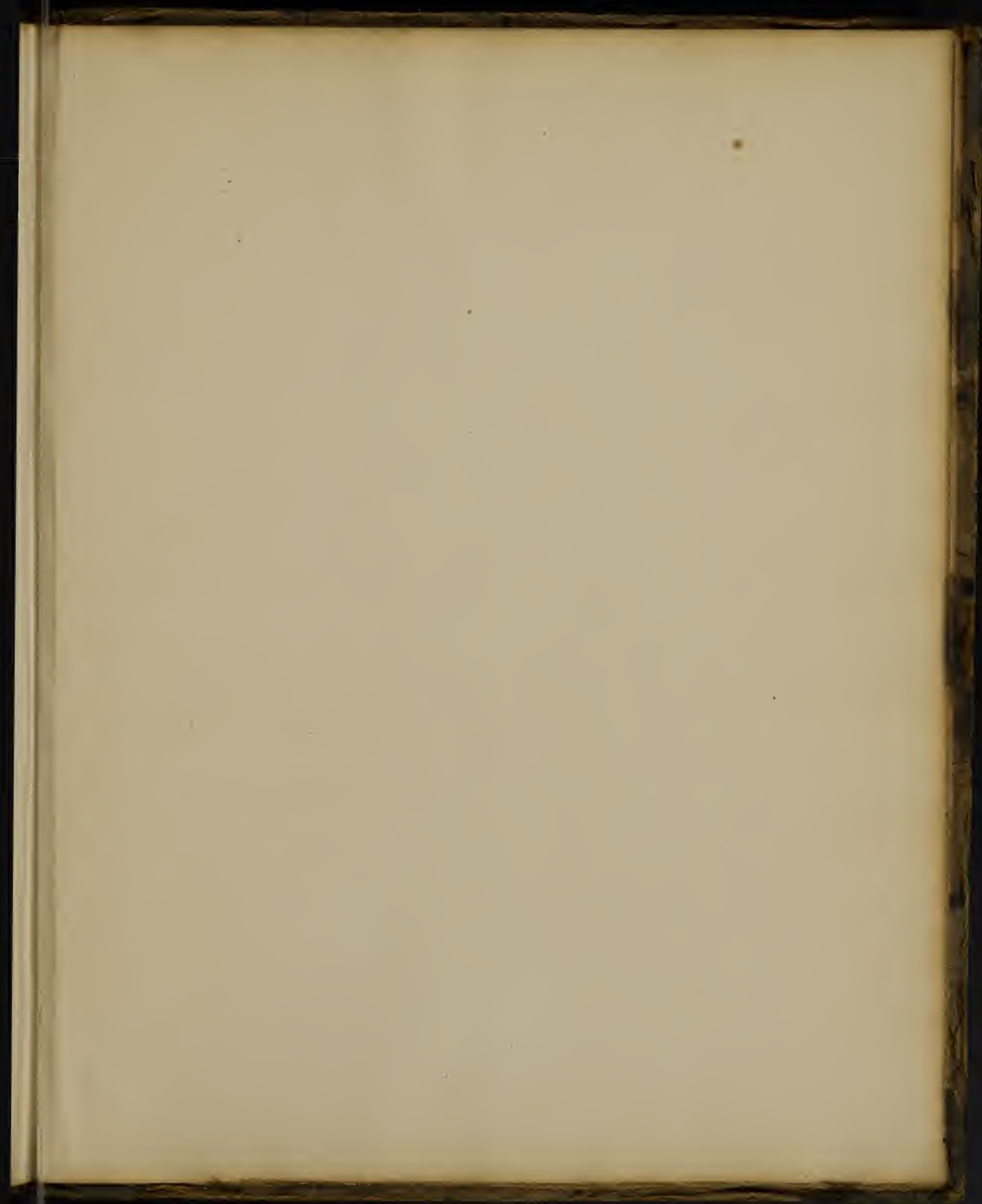


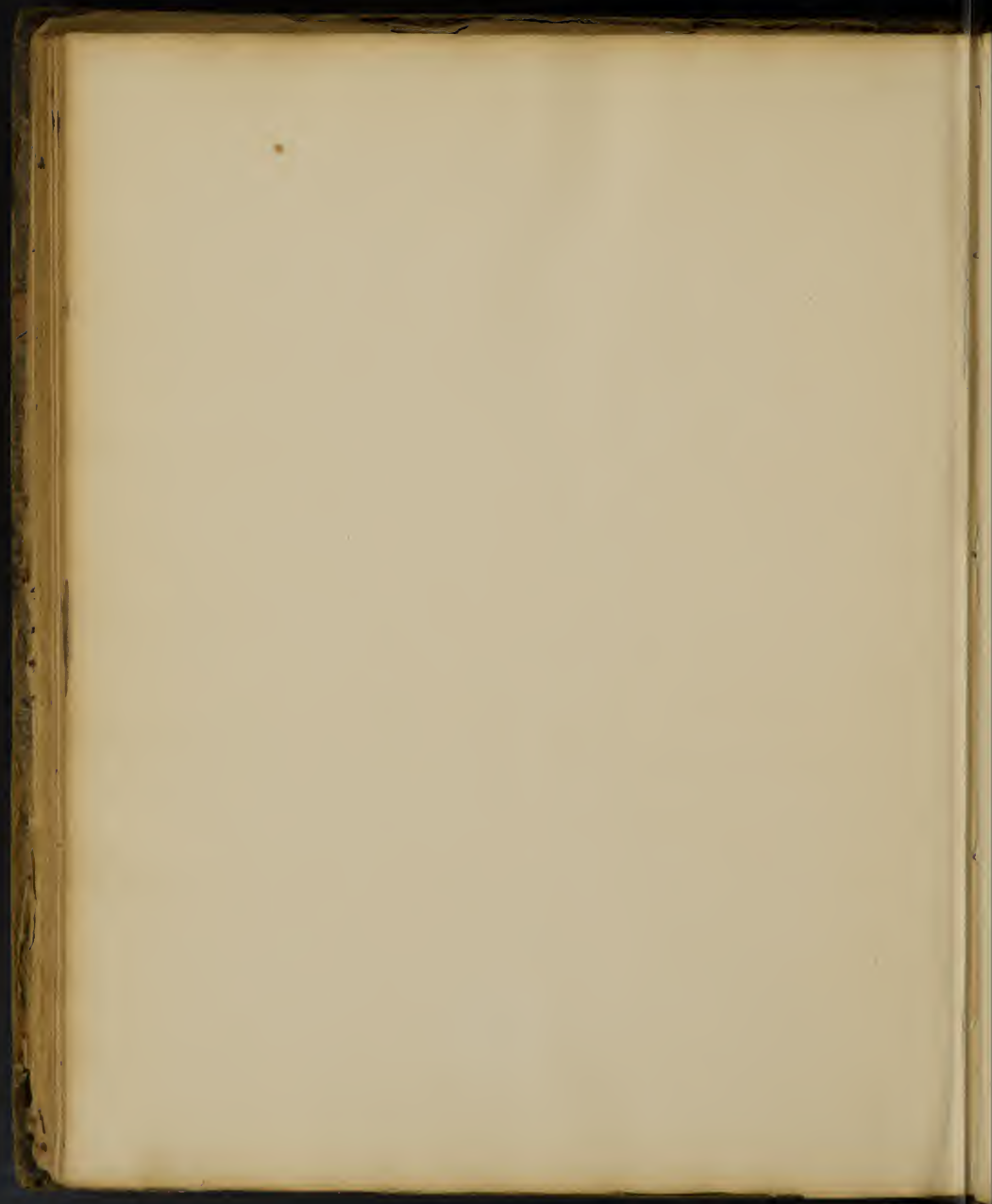


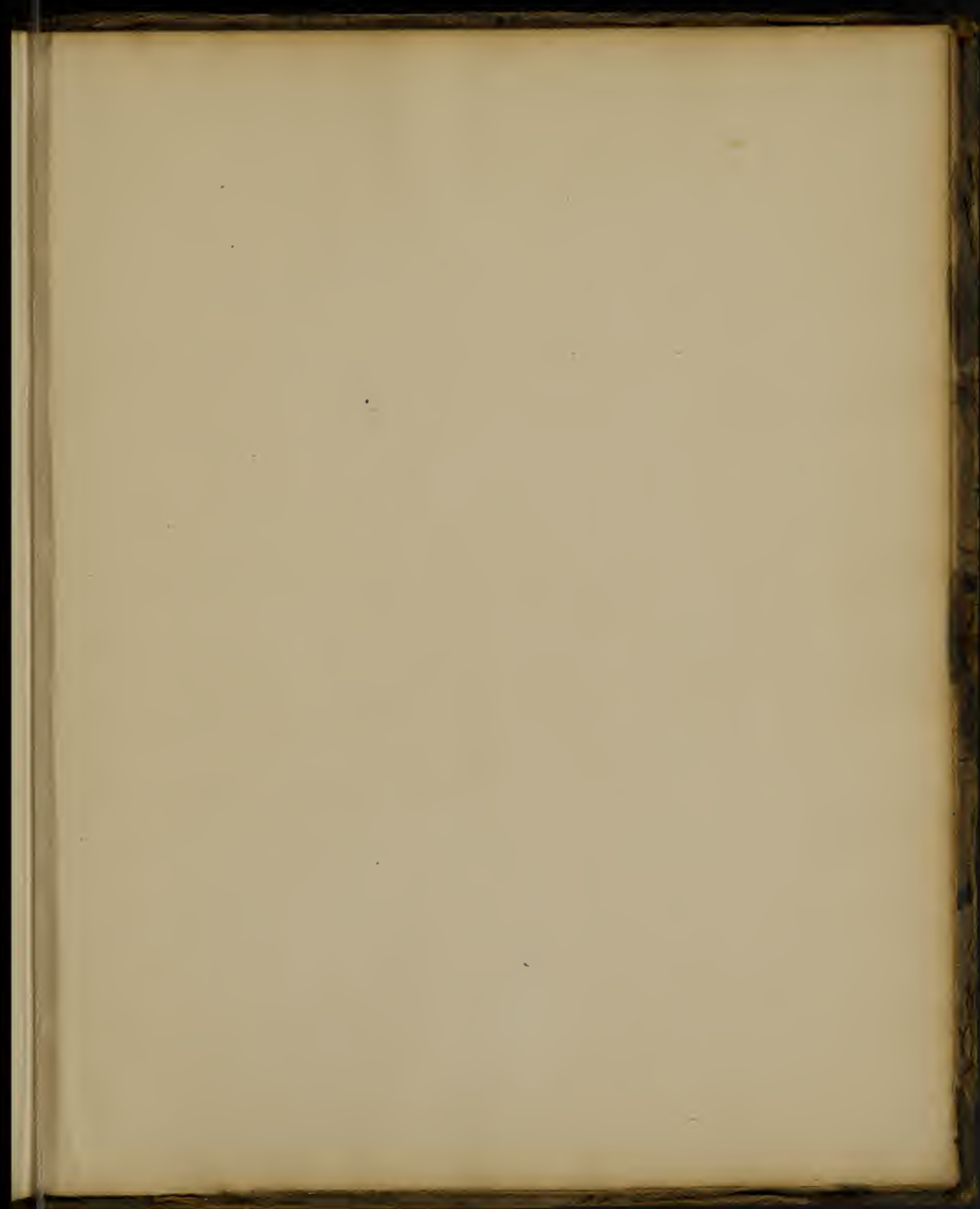


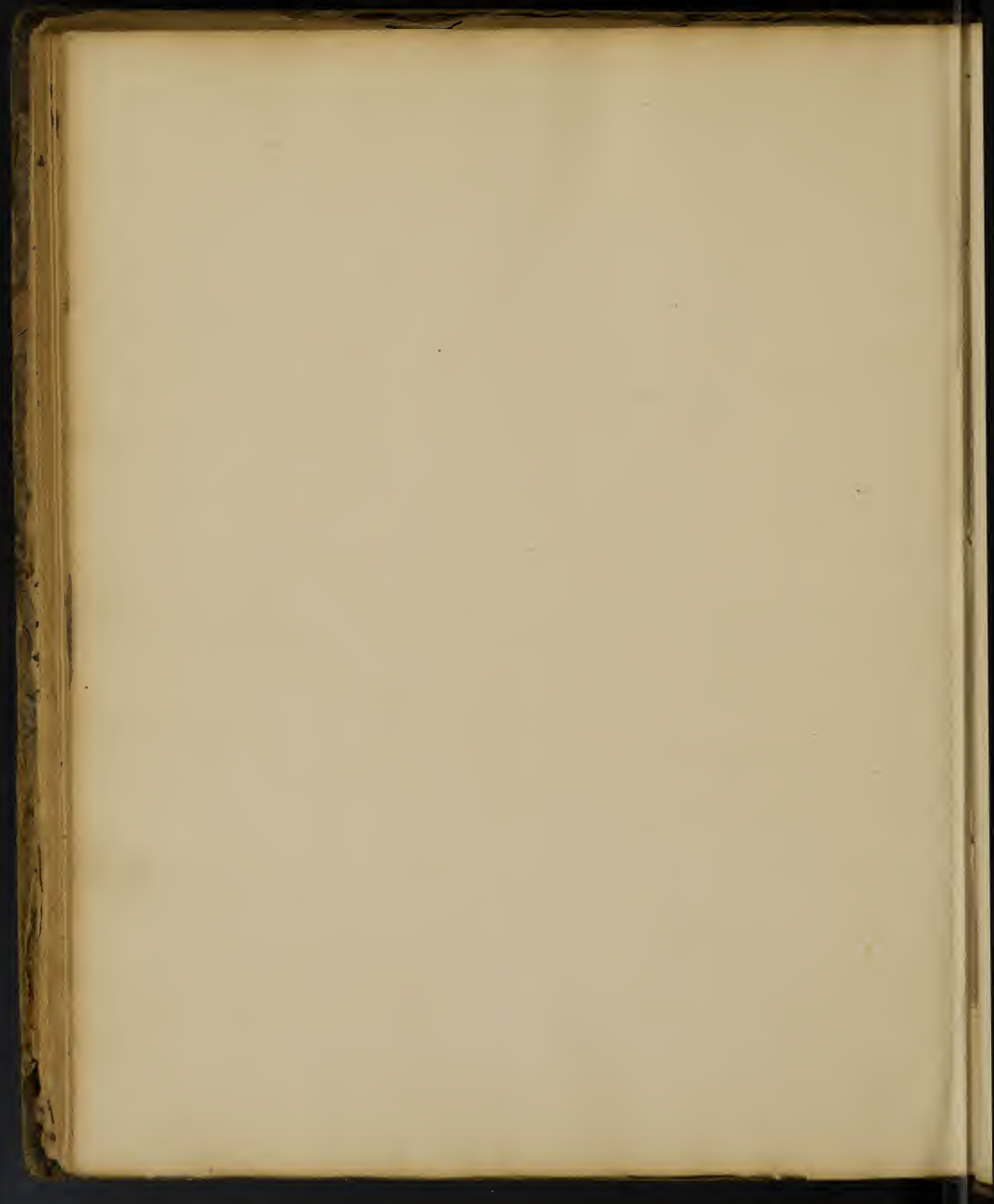


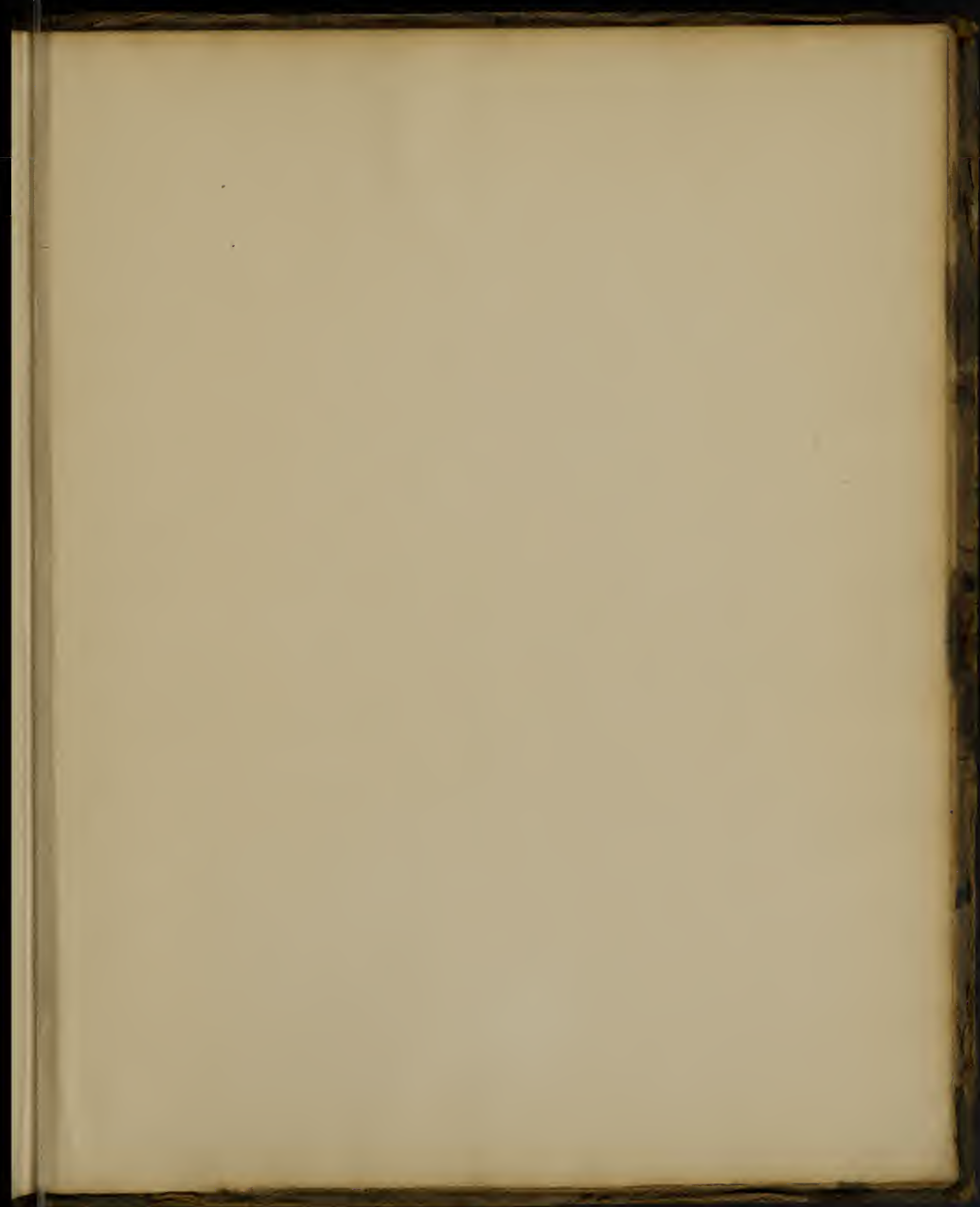


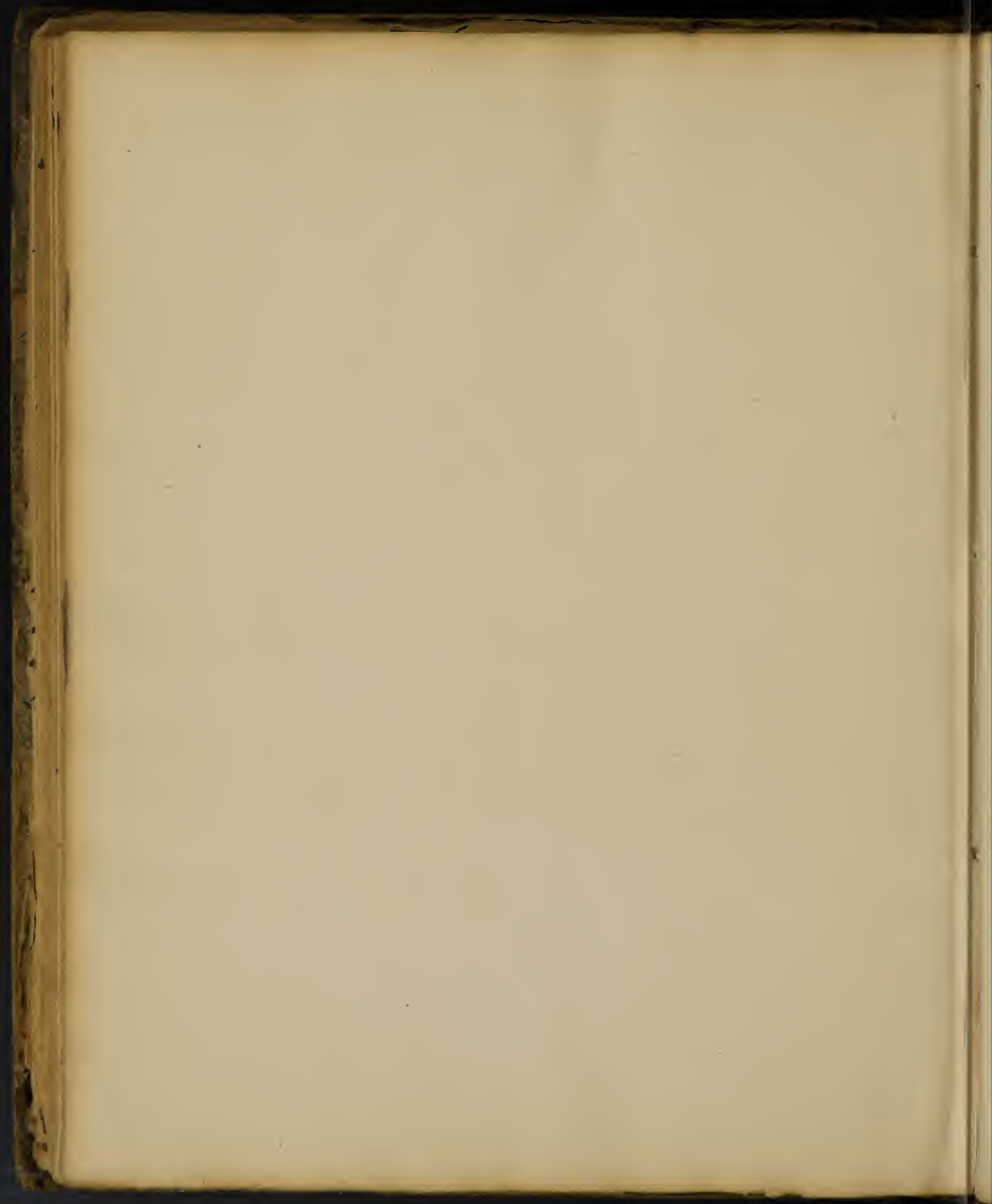


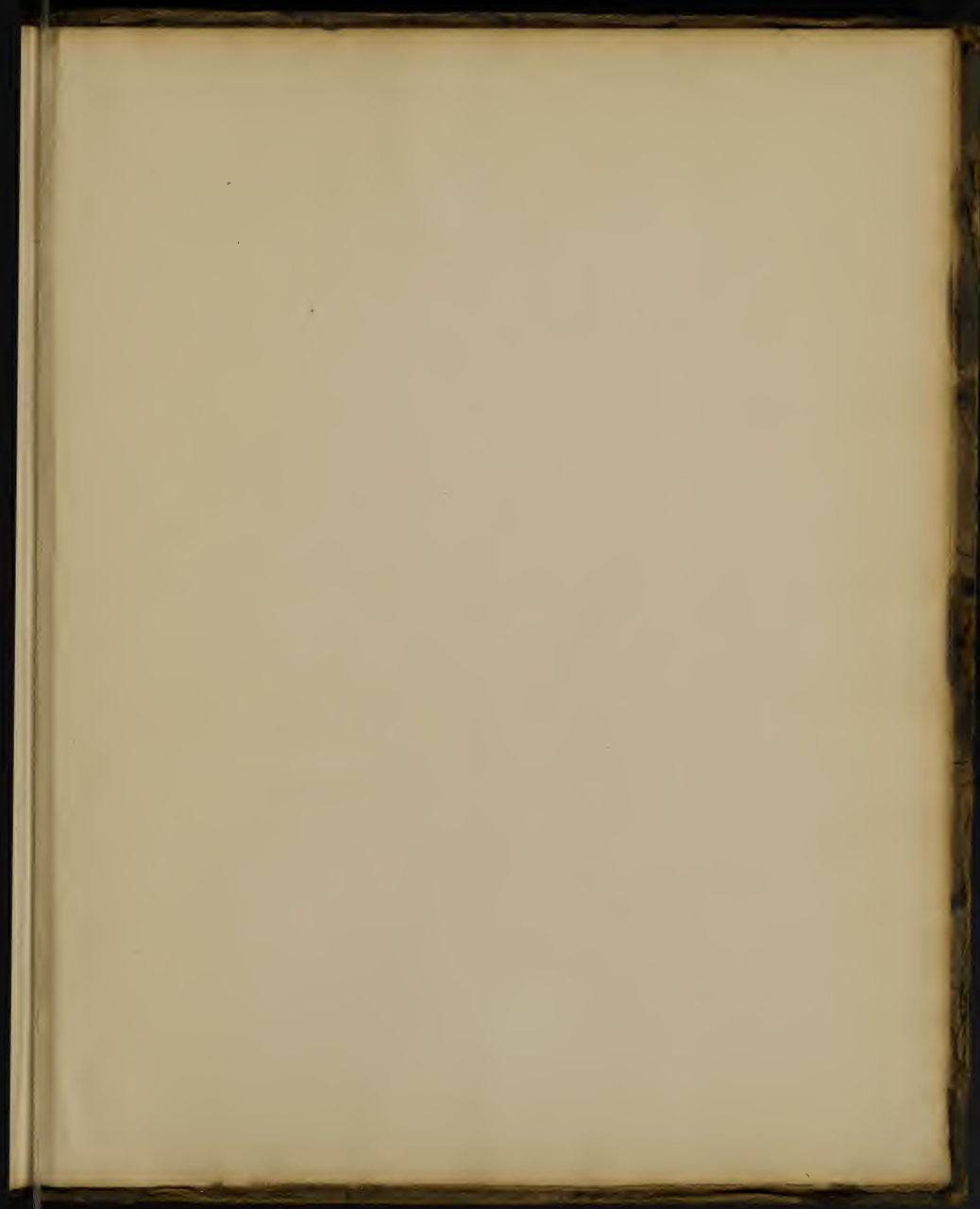


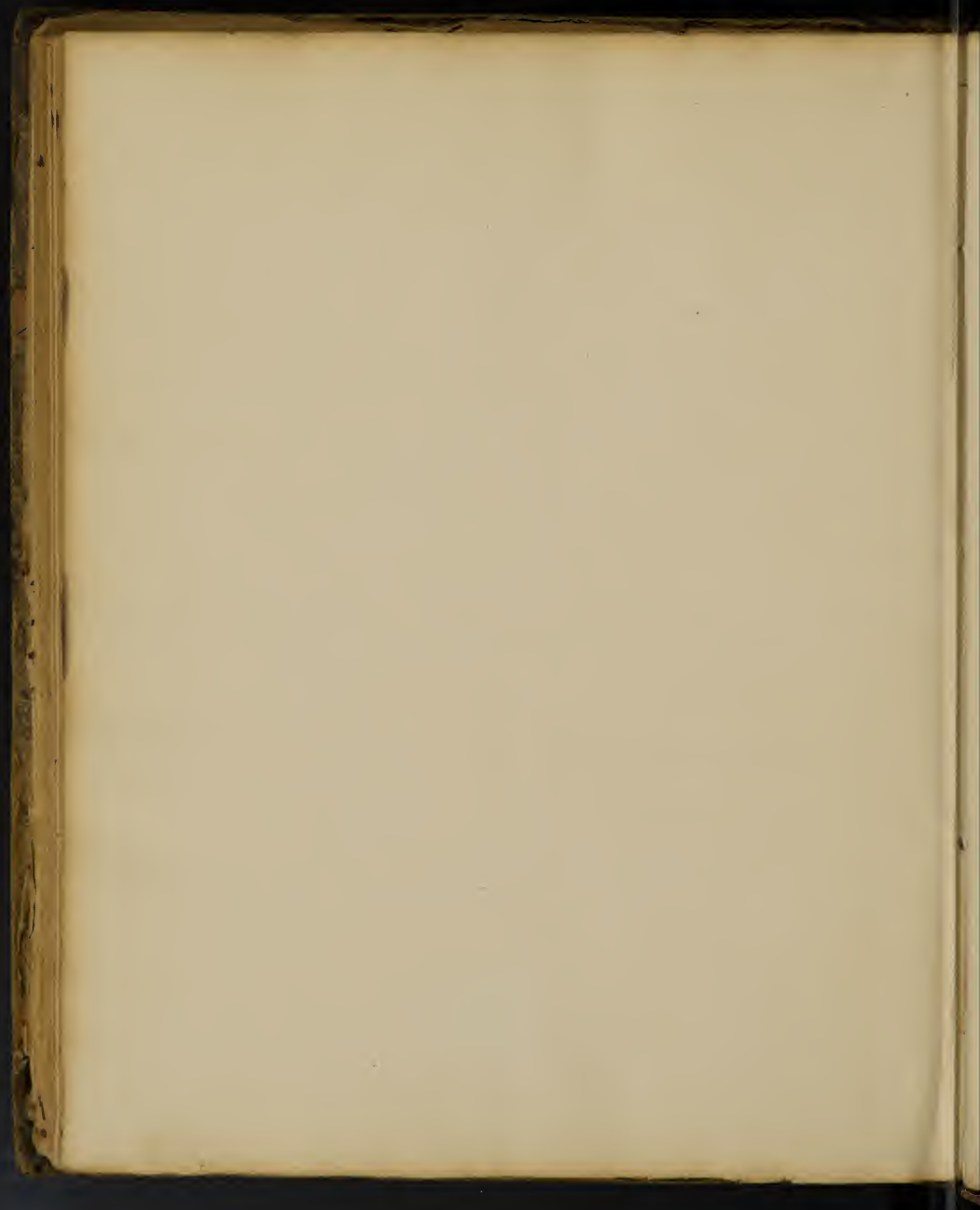


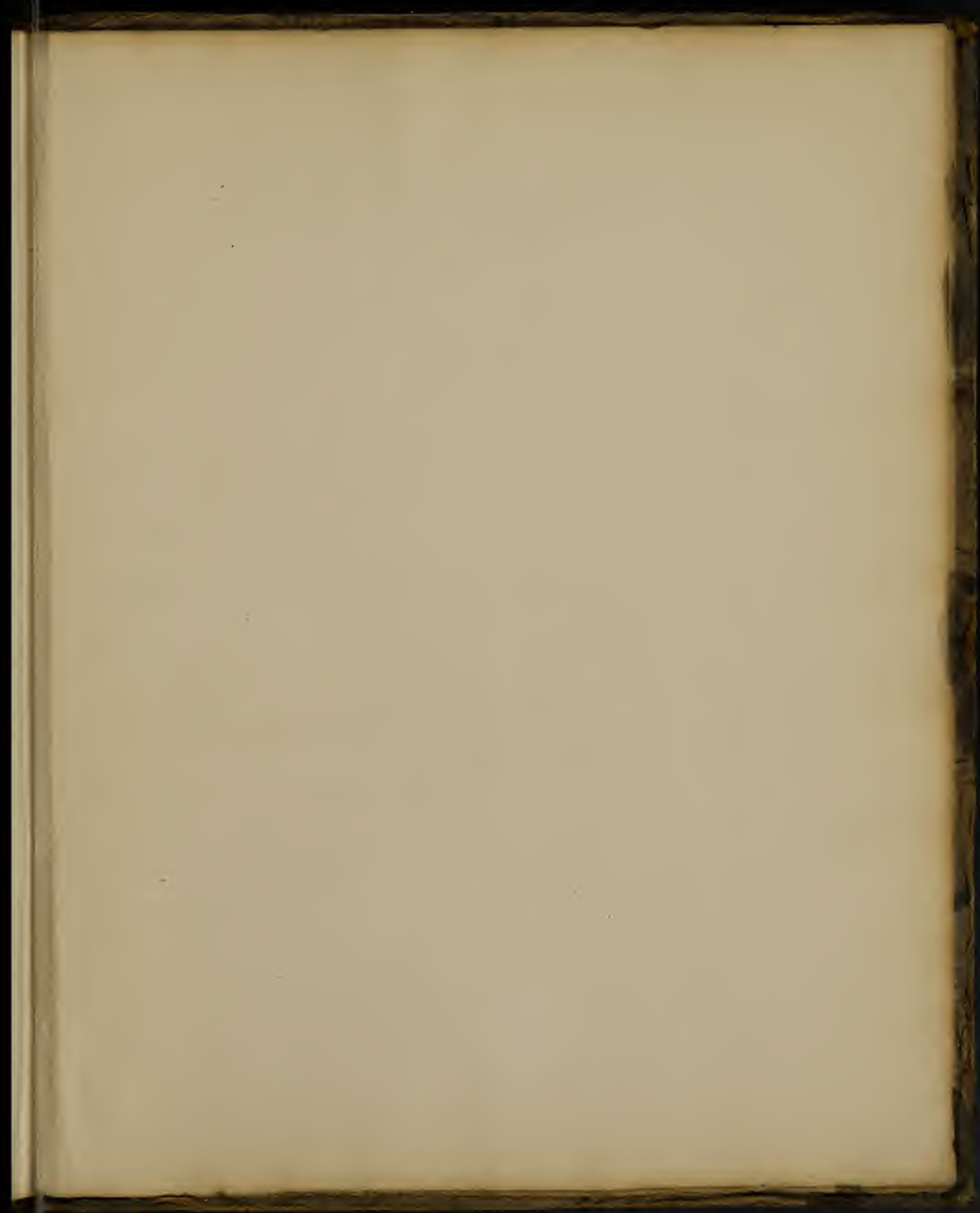


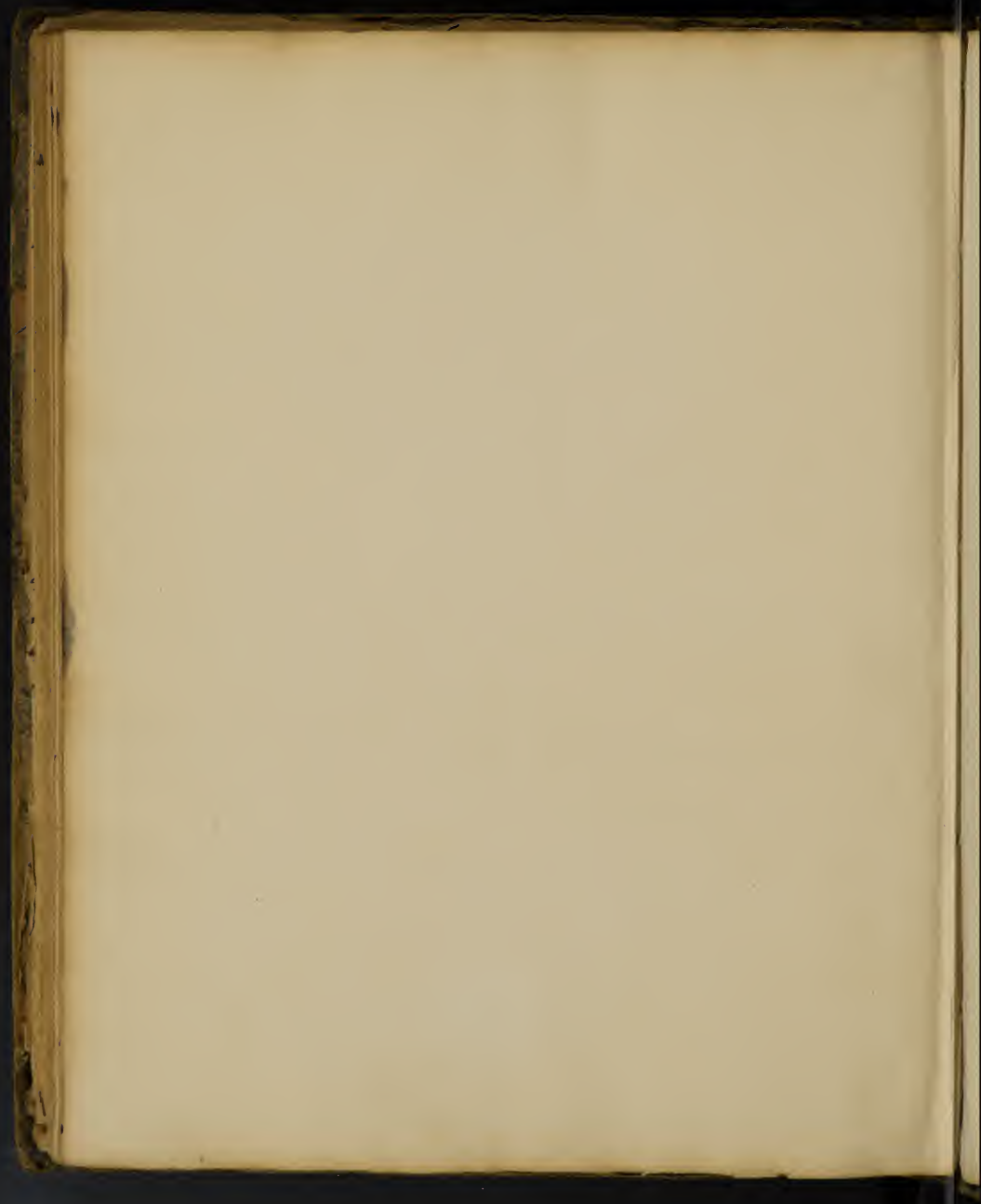


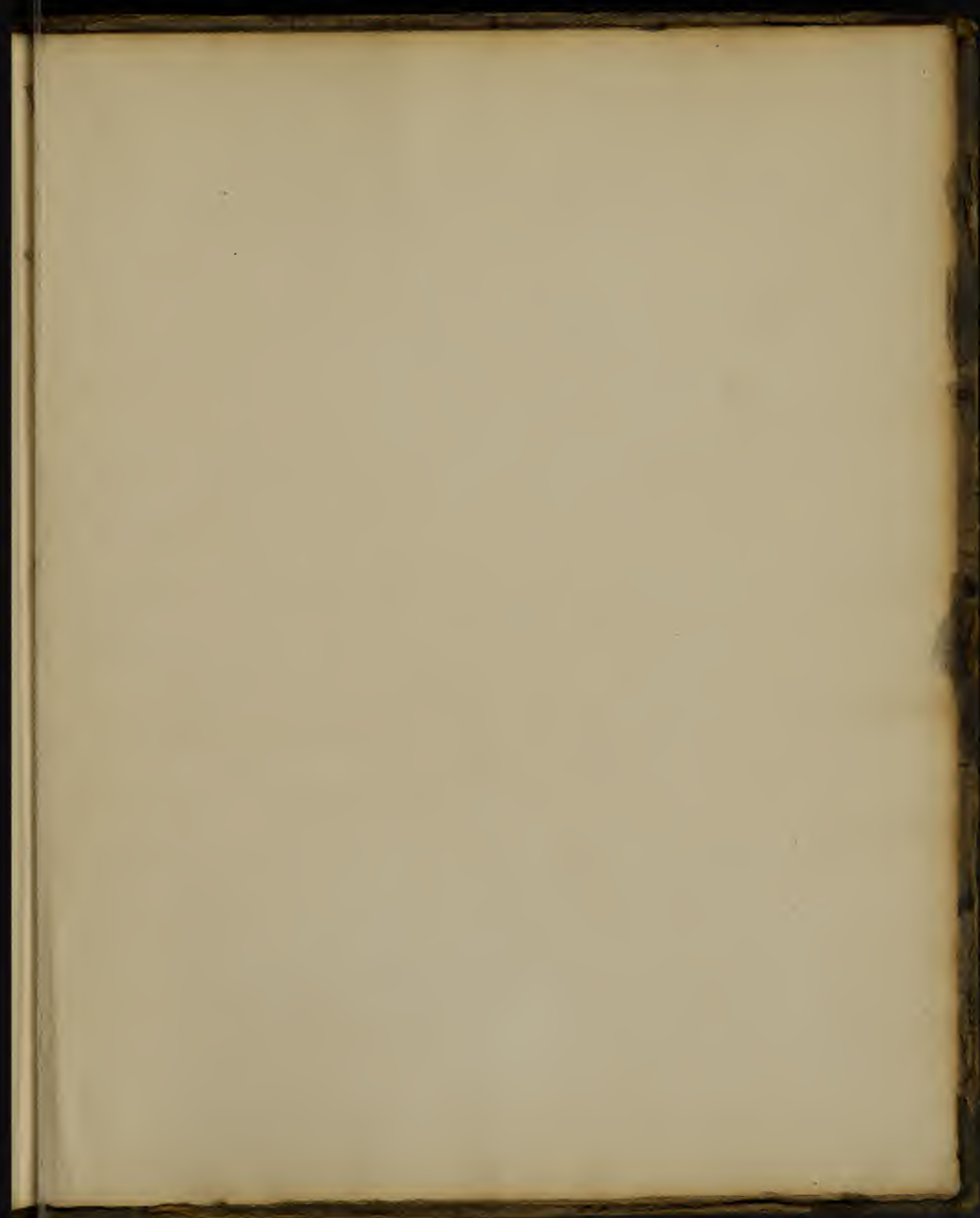


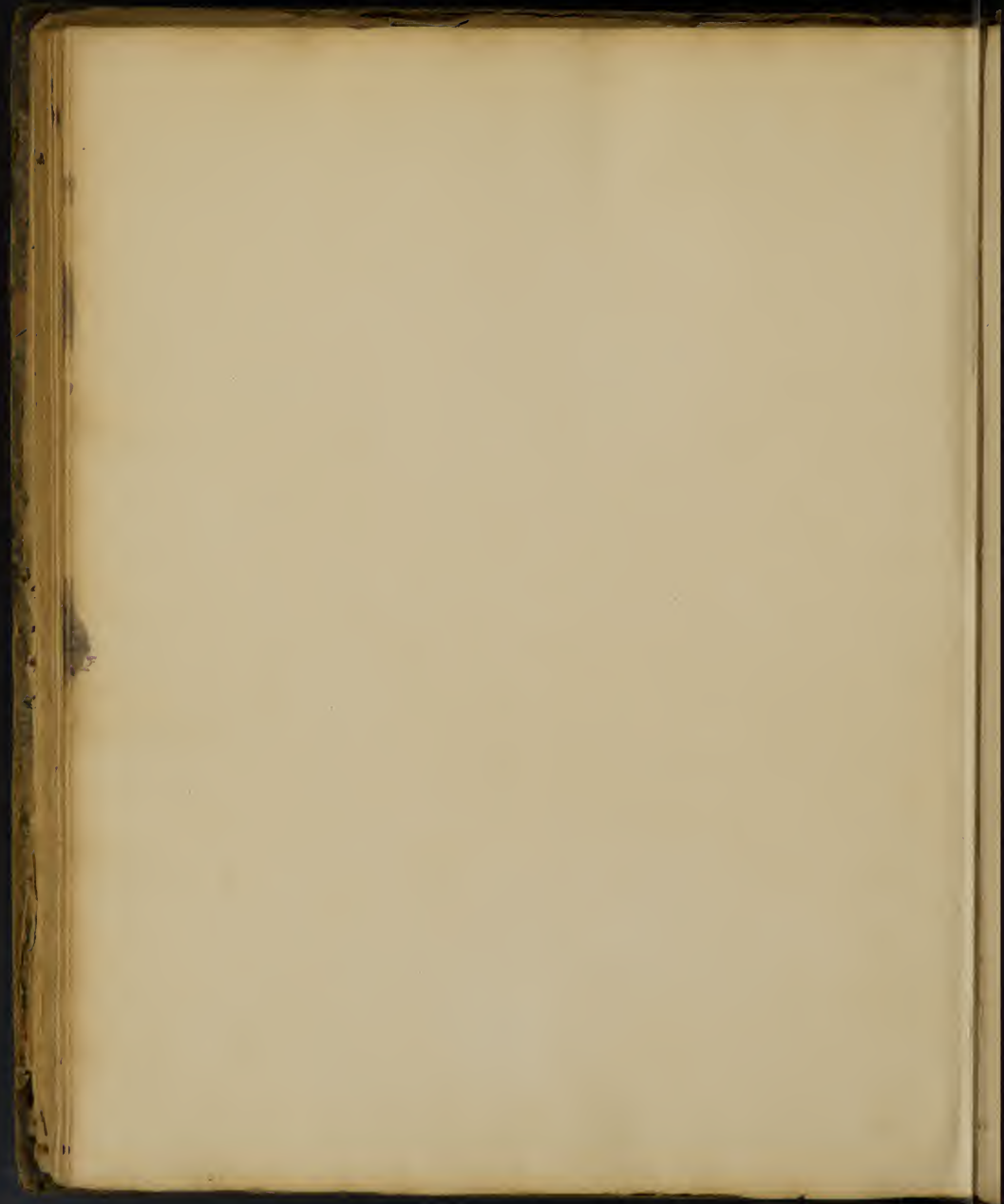


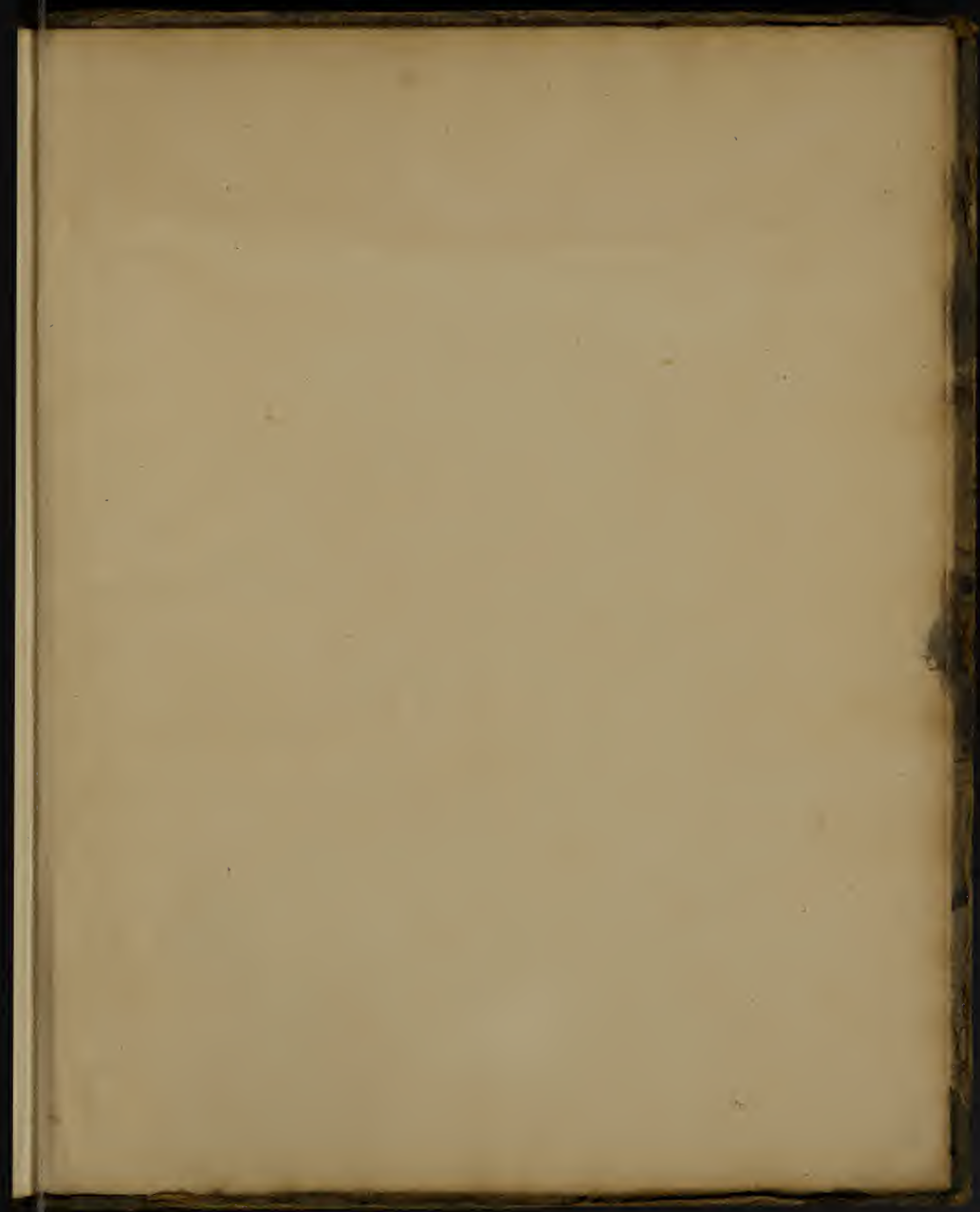


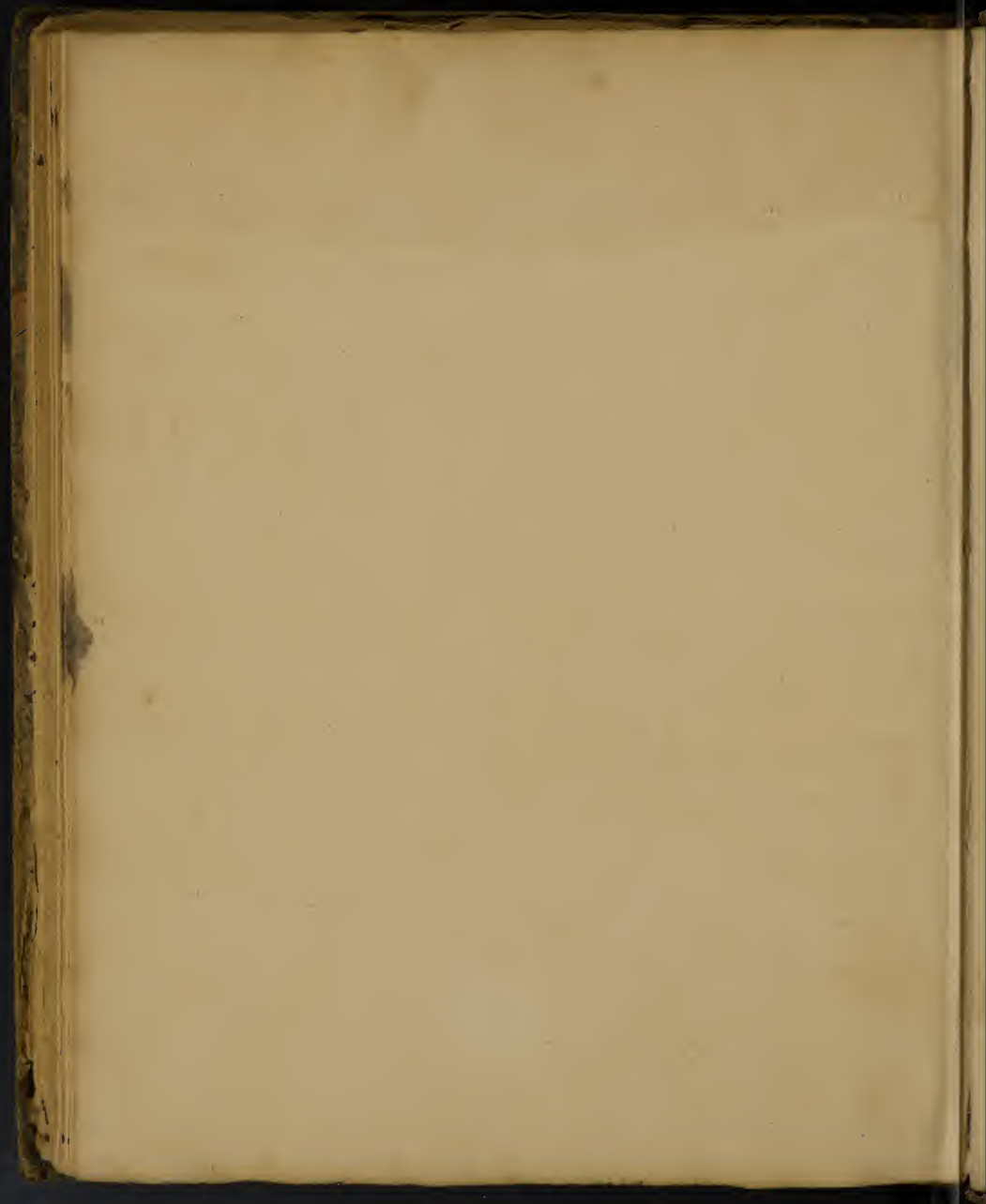


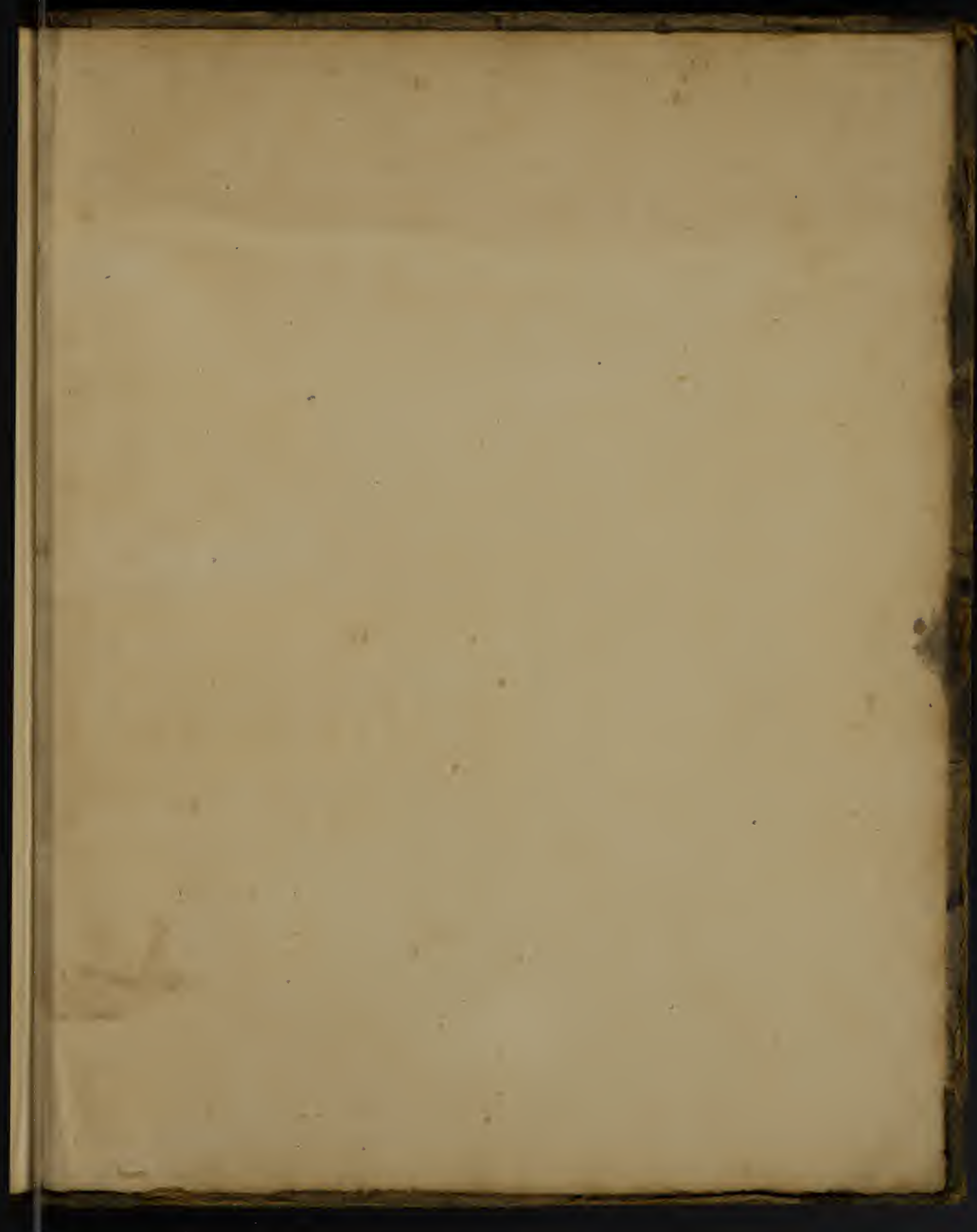


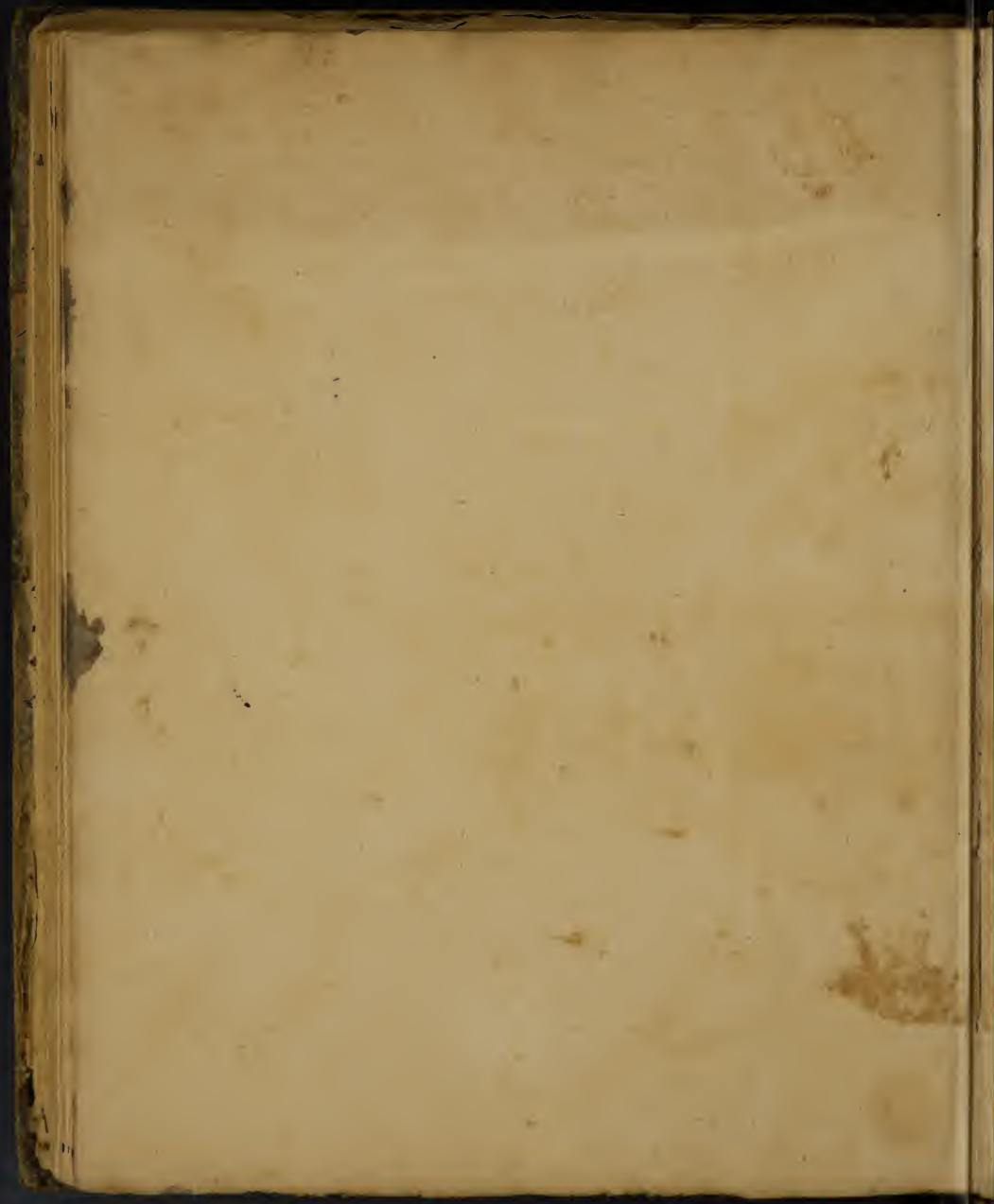












Gift of
Donald J Warner
11-18-41

